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Our Holy Grail: States, Power, and Networks in the Stymied Global Quest to Define Terrorism

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States, Power, and Networks in the Stymied Global Quest to Define Terrorism

Erika Lorenzana Del Villar, Ph.D.

University of Connecticut, 2018

ABSTRACT

The absence of a comprehensive, universal and legally binding definition of terrorism has characterized the international terrorism discourse for decades. Scholarship on the interplay between states, discourse, and power in shaping this dilemma has been largely absent. This project attempts to sociologically examine this theoretical relationship by primarily looking at the role of the state in producing, framing, and otherwise manipulating the definition of terrorism, and consequently, the global terrorism discourse within the United Nations. Applying the sociological concepts of states, discourse, and power, while drawing on the theoretical lens of Bob Jessop's (1990) strategic-relational approach to examining states, this study assesses the strategic political processes engaged in by UN member-states over the last two decades to define and frame the discourse of terrorism. At the very core of the political impasse to define terrorism is a confluence of three tightly linked factors: 1) varying political interests carried out through 'state projects'; 2) the relative strength of geopolitical alliances or networks of states through which state projects flow and operate; and 3) the need for states to attain political clout in transnational social life by shaping and framing discourse as a weapon of power. By viewing the state as a product of social and political relations within a larger global state system, this study sheds

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light on how states shape, manipulate, or otherwise use a constructed body of meaning, i.e. the terrorism discourse, to influence decision-making processes and norms in international security affairs.

Keywords: terrorism, state, discourse, power, United Nations, UNCCIT, counter-terrorism, political sociology, state project, networks

Our Holy Grail:
States, Power, and Networks in the Stymied Global Quest to Define Terrorism

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A Dissertation

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APPROVAL PAGE

Doctor of Philosophy Dissertation

Our Holy Grail:

States, Power, and Networks in the Stymied Global Quest to Define Terrorism

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| Draft comprehensive convention against international terrorism | |

CHAPTER 1. INTRODUCTION

“The struggle to define terrorism is sometimes as hard as the struggle against terrorism itself. [The claim that] it is unnecessary and well nigh impossible to agree on an objective definition of terrorism, has long established itself as the “politically correct” one. [Yet]... an effective struggle against terrorism requires such a definition. The sooner the nations of the world come to this realization, the better.”

- Boaz Ganor, *Director of the International Policy Institute for Counter-Terrorism*

Overview of the Study: The Research Question

Why is there no comprehensive, universal and legally binding definition of terrorism? This question has been asked numerous times by political, security, and social science theorists and policy analysts, who have in turn offered extensive and critical explanations for this lack of conceptual consensus. With no conclusive answer to this puzzle, this definitional question is usually no longer posed in empirical or policy work on terrorism; rather, scholars of the phenomenon simply assume a particular definition of terrorism as a formality or truism, with each analyst operationalizing the concept to suit the purpose of his or her work (Weinberg, Pedhazur, and Hirsch-Hoefler 2004). As Perry (2010: 249) aptly points out, a definitional consensus on terrorism has been at least as elusive as the Holy Grail. Despite the existence of copious theoretical work on terrorism and what it means, as well as multiple United Nations (UN) conventions dealing with “terrorist acts” (covering, *inter alia*, offences on aircrafts, threats to civil aviation, nuclear terrorism, terrorist bombings, and the financing of terrorism), the world is far from addressing the terrorist threat through the use of a common, objective definition of the phenomenon. Arguably, this ambiguity in the academic and legal discourse – tied with the

inexhaustible debate characterizing the political discourse within the international state system – has resulted in arbitrary national-level interpretation of the aforementioned conventions in accordance with the post-9/11 UN Global Counter-Terrorism Strategy (A/RES/60/288). It is thus fair to argue that without a standardized, legal definition of terrorism at the inter-state level, the implementation of counter-terrorism strategies agreed upon by UN member-states becomes not only indiscriminate but, more importantly, vulnerable to political conflicts and human rights abuses.

Given the thorny discourse surrounding the global definition of terrorism, this study aims to find the sociological answers to why the international community consistently fails to come to a formal agreement on what terrorism means and entails. The study is guided by the following overarching research question: ***Why have United Nations (UN) member-states been unable to come to a consensus on how to define terrorism as a form of political violence?*** In particular, the study will ask: *What are the social and political conditions that affect the global discourse on terrorism, particularly the construction of the definition of terrorism at the UN level? Who or what entities has/have shaped the global discourse on terrorism, and by what means? How do power relations and networks between states shape the discourse surrounding counterterrorism efforts?*

In exploring these questions, this study aims to examine the social and political conditions that affect the global discourse on terrorism, particularly with regard to the construction of the definition of terrorism in reference to the proposed United Nations Comprehensive Convention on International Terrorism (UNCCIT), which has been on the table for almost two decades. The study also seeks to identify entities or institutions that have shaped the global discourse on terrorism, and by what means they have done so.

Finally, this dissertation aims to explain how power relations and networks between states affect the discussions of the international community in its efforts to reach a comprehensive definition of terrorism.

Applying the sociological concepts of discourse and power, and drawing on the theoretical lens of Bob Jessop's (1990) strategic-relational approach to examining states, this dissertation will assess the strategic political processes engaged in by UN member-states to define and frame terrorism pursuant to the organization's mandate to address challenges to global security. The present aim here is to understand how these processes relate to the development of a discourse and regime around terrorism and counter-terrorism that not merely seeks to address the threat, but more significantly, becomes another mechanism to consistently ensure and reify state power.

Given the constant political power struggle that characterizes the international state system, I hypothesize that first, defining terrorism and shaping its discourse has been a function of each member state engaging in what Bob Jessop (1990) calls a 'state project' - a tool for state formation, cohesion, and hegemony. When states undertake such a project in relation to the terrorism discourse, the result is the conceptual opacity of terrorism itself; second, specific political and ideological interests of states, articulated and advocated through state blocs, significantly contribute to the general definitional debate on terrorism at the international level, and particularly to the deadlock in the UNCCIT negotiations; and third, with the definitional debate being a struggle for state power - and states being unwilling to yield to other states' acquisition of relatively more power in the state system - a consensus on a highly political concept becomes virtually impossible to achieve.

Using content and discourse analysis, and applying social network theory on archival data from official records and transcripts of terrorism-related negotiations at the UN (with a focus on the UNCCIT), statements from member-states, and supplementary interviews with UN officials and member-state representatives to the United Nations, this dissertation intends to address the above questions and explore the posited hypotheses. The study will provide an analysis of the power relations, political conditions, and institutions affecting the international discourse on terrorism that have simultaneously resulted from and continue to shape the process towards a common global definition of the phenomenon. The ultimate hope is that with this analysis, possible areas of compromise can be identified that could perhaps lead to a practical compromise - if not consensus - on what terrorism means, and how it can be effectively prosecuted on the basis of a universal definition.

Significance of the Study

The practical and operational significance of having a universal definition of terrorism has been discussed in numerous venues by scholars and policymakers alike. In one of the official reports of the Ad Hoc Committee for the proposed international convention, the Coordinator of the committee, Carlos Fernando Díaz-Paniagua of Costa Rica, could not have stated the significance of a consensus on a definition - and a comprehensive treaty - any better: The UNCCIT does not only have symbolic value in terms of universal condemnation of terrorism; more importantly, the negotiating process itself can produce a proposed definition that has the ability to transform international law on terrorism:

“[The] negotiation process had managed to elaborate, in draft article 2 of an instrument that would be legally binding, the inclusionary elements of a legal definition of international terrorism. Once adopted, it would be the first time that States would have, in a universal counter-terrorism instrument, a definition that would serve as the basis for taking counter-terrorism measures.” (A/66/37, Annex 2, sec. A, para. 2).

As an instrument of international law and counter-terrorism efforts, the UNCCIT was intended to “complete the international, police and judicial cooperation, legal regime against terrorism (Díaz-Paniagua 2008: 515). The convention would be able to address other forms of terrorist activity previously not contemplated in existing treaties on terrorist acts and would serve as the conceptual and operational catch-all instrument to ideologically and politically support an effective counter-terrorism strategy (Ibid).¹

Our primary task here, however, is not to simply add to that discussion but rather to unpack the sociological significance of the absence of a definitional consensus on terrorism; that is, to provide an analysis that goes beyond identifying the challenges to implementing a counter-terrorism strategy on the ground and delve into why such challenges exist in the first place.² The problem posed by the failure to address the core of the concept in the global discourse - and one which this study recognizes - speaks to the lack of a conceptual and theoretical understanding of the links between states,

¹ This view was corroborated by a UN Legal Affairs official in an interview conducted by the author on April 15, 2015 in New York.

² It is also important to note at this juncture that a comparative analysis between the discussions surrounding an international convention on terrorism (and consequently, its definition) on the one hand, and the debates surrounding conventions on other international crimes such as genocide or torture might provide insight into the fundamental difference(s) of terrorism relative to other atrocities under international law. A separate study on such intrinsic conceptual or practical differences could be instructive, and might complement this project well.

discourse, and power that might have practical ramifications on the international definitional debate on terrorism.

The value of unpacking the role of the state in discourse production

Sociological literature on the link between discourse and power has been abundant (see Foucault 1978; Hall 1985; Bernstein 1971-75; Mueller 1973; Schatzman and Strauss 1972; Van Dijk 1989). In such scholarly discussions, the power to produce and manipulate discourses has been attributed to various individuals or groups in society that possess “symbolic capital” (e.g., journalists, academics, writers, directors, to name a few; see Bourdieu 1977, 1984; Bourdieu and Passeron 1977). Symbolic capital, according to Bourdieu (1989, 17; see also Bourdieu 1986) is a form of capital (along with economic, social and cultural capital) that is also “perceived and recognized as legitimate.” It refers to an acquired reputation for competence by virtue of accumulated prestige, celebrity or honor... founded on a dialectic of knowledge (*connaissance*) and recognition (*reconnaissance*)” (Bourdieu, 1993, p. 7). Following Bourdieu’s approach, the accumulation of capital - economic, social, cultural, and symbolic - determines power relationships within a field; a field that can be understood as “a space of forces within which contending agents struggle for power” (Bourdieu 2002 cited in Poblacion, Castro and Palazon 2016). These sets of capital as accumulated resources reproduce the social status of the agents accumulating them, as well as the social structure as a whole (Bourdieu 2000; Bourdieu and Wacquant 2013; also cited in Poblacion, Castro and Palazon 2016).

The concept of symbolic capital might also be analytically applied to states when recognized as agents in an international system. In such a context, states are engaged in a constant process of building and protecting their reputation in a global political arena characterized by a perennial struggle for power. Yet little has been explored in sociological literature about the role of the state as an agent in producing, framing, and otherwise manipulating discourse – and consequently, perceptions – as a mechanism to consistently ensure and reify its sovereign power and clout in the international system.

This dissertation is an attempt to assess and dissect that theoretical and conceptual relationship. By doing so, it aims to not only understand the practical and political factors that affect the definitional debate on terrorism, but more significantly, contribute a sociological examination of the role of the state in producing and shaping meaning in transnational social life.

The importance of a sociological analysis

Seeking to understand the processes of exchange that shape the construction of the global counter-terrorism regime at the UN-level (one that theoretically aims to take the causes and consequences of terrorism into account) will greatly benefit from a sociological analysis that focuses on the power connections and interactions within the network of global negotiations. Such a study will not only allow us to view the practical reasons for the definitional debate, but will more importantly provide general theoretical insights into how state power shapes international discourse, by what means, and toward what ends. The analysis might also provide empirical arguments that could aid in efforts to move

beyond the definitional debate at the United Nations, and into substantive discussions about legal and political mechanisms to respond to the long-standing crisis.

While this study does not examine the behavior of particular terrorist groups or social conditions that cause violent behavior *per se*, this project provides an analysis of social and political conditions within states that may serve to create climates conducive (or not) to terrorism, particularly in relation to 1) how states actually view terrorism ideologically, legally, or politically; and 2) what they think the best methods are to combat the threat within their nuanced national milieus. Examining how states construct and understand terrorism in relation to their historical and cultural contexts vis-à-vis their political and/or foreign policy interests, might provide sharper insight into various conditions that allow certain forms of terrorism to exist and perpetuate in particular national settings. How a country defines terrorism reflects the various social, cultural, historical and political factors that can determine how it chooses to address the social problem. This unique framing of terrorism is what UN member-states take with them into the negotiations on treaties regarding terrorism and counter-terrorism strategies; and these highly nuanced and context-specific conceptions of terrorism have clearly led to a deadlock on efforts to define and prosecute it using uniform global standards. Without trying to understand the push and pull that goes on within the halls of the UN surrounding the discourse on terrorism, we might lose the opportunity to find areas for compromise and collaboration that can move us toward clearer and more effective international counter-terrorism measures.

This dissertation is an attempt to engage in such an endeavor as it aims to sociologically analyze an important decision-making process in relation to a large-scale

societal response to terrorism. The objective is for the findings of this project to be useful to security policymakers and practitioners as they seek to formulate effective and standardized counter-terrorism policies and strategies at the inter-state level. Being able to get past defining 'terrorism,' into figuring out how it can be addressed – and even prosecuted – at the international level might lead to better methods of prevention and more useful ways of addressing its consequences when it does happen.

The present aim here is thus twofold: On a theoretical level, this dissertation seeks to gain a deeper understanding of the state as a product of social and political relations, vis-à-vis discourse and power within the larger global state system. Through an examination of the development of the discourse and regime around terrorism and counter-terrorism within the foremost global institution and association of states, i.e. the United Nations, this study seeks to understand the links between discourse, power, and states, and how the latter use a constructed body of meaning to influence decision-making in the UN.

On a practical level, by analyzing the mechanisms and processes of how states produce and frame the terrorism discourse at the UN, the study ultimately seeks to understand how the network of relations of states – and even the agents of these states – navigate the discourse on terrorism over time in order to wield political power. The hope is that with such an analysis, possible areas of compromise can be identified that could perhaps lead to a consensus on what terrorism means, and how it can be effectively prosecuted on the basis of a binding, universal, and legal definition.

Background of the Study: Terrorism as a Social Problem

We are all faced with the threat of terrorism on a daily basis, whether we reside in a quiet suburban neighborhood, a densely populated urban area, or a war-torn city. In recent years, terrorist attacks - as a form of political violence - have occurred almost daily in different parts of the world. From 2014 to 2015 alone, data from the Global Terrorism Database reveal that there were more than 25,000 terrorism-related incidents recorded worldwide, from individual assaults on private citizens, property, and businesses, to attacks by extremist groups on government installations, public spaces, utilities, and other social institutions³. The data for 2015 to 2016 show 28,340 incidents. For 2016 alone, crowdsourced data culled from open-source reports show at least 1,487 terrorist attacks have occurred with 14,801 fatalities; in 2017 there were 1,332 attacks with 8,319 fatalities⁴.

³ Terrorism-related “incidents” refer to all acts of violence that fall within at least one of the three criteria set up by the Global Terrorism Database (GTD): Criterion I: The act must be aimed at attaining a political, economic, religious, or social goal; Criterion II: There must be evidence of an intention to coerce, intimidate, or convey some other message to a larger audience (or audiences) than the immediate victims; Criterion III: The action must be outside the context of legitimate warfare activities. This total number is based on a broad, advanced search by the author of all recorded incidents that meet any of those criteria and were reported through open source media. The data show that there were 25, 867 incidents of terrorism reported across all geo-political regions: North America; Central America & Caribbean; South America; East Asia; Southeast Asia; South Asia; Central Asia; Western Europe; Eastern Europe; Middle East & North Africa; Sub-Saharan Africa; Australasia & Oceania. (Accessed January 23, 2017). Data for 2016 are still not available from the GTD at the time of writing.

⁴ These numbers were gathered by PeaceTech Labs - an independent non-profit organization focused on addressing peace and conflict issues - based on crowdsourced data from Wikipedia. PeaceTech Labs notes: “As with any crowdsourced data, the map may display

The types of terrorist attacks have also evolved from those that use highly intricate bombs to destroy infrastructure to the use of non-traditional devices such as trucks to ram into civilians in public spaces.⁵

These numbers and incidents suggest that terrorism indeed has a quotidian logic to it, which reifies our fears that violent attacks from extremists can occur anywhere and anytime; and that our own communities, no matter how sheltered, are not immune to the consequences of extremist political violence. In the United States, this fear is palpable with 83% of Americans recently expressing worry about a "major" terrorist attack happening in the country⁶ after the Paris and San Bernardino attacks in 2015; and by the end of that year, terrorism ranked first among the issues of national concern for ordinary citizens⁷.

spurious or objectionable data, for which Esri and PeaceTech Lab hold no responsibility. Similarly, the definition of terrorism is inherently subjective, and in the case of this map is determined by the contributing community." Thus, unlike the data from the GTD, these numbers are not based on strict operationalized criteria to identify terrorist attacks. That said, these numbers are verifiable through open source media reports on significant attacks.

⁵ Such attacks using trucks include the Nice attack on Bastille Day in 2016, the Berlin Christmas Market attack in 2016, the London Westminster Bridge attack on March 22, 2017, the Stockholm department store attack on April 7, 2017, and the London Bridge attack on June 3, 2017.

⁶ Washington Post-ABC News Poll, November 16-19, 2015.

⁷ Gallup Poll, December 2-5, 2015. Available at <http://www.gallup.com/poll/187655/americans-name-terrorism-no-problem.aspx>. This is also corroborated by an NBC-News/Wall Street Journal Survey conducted on December 6-9, 2015. Available at [http://msnbcmedia.msn.com/i/MSNBC/Sections/A_Politics/FORPOST15564%20NBCWSJ%20December%20Poll%20\(PM%2012-14-15%20Release\)%20\(3\).pdf](http://msnbcmedia.msn.com/i/MSNBC/Sections/A_Politics/FORPOST15564%20NBCWSJ%20December%20Poll%20(PM%2012-14-15%20Release)%20(3).pdf).

This trend is not unique to the United States. In a 2016 global survey conducted by the Center for Strategic and International Studies, two thirds of respondents thought that violent extremism is a “major” problem in their country, with citizens from Turkey, Indonesia and France overwhelmingly expressing this as their top concern⁸. Since the atrocities of September 11, 2001 (9/11), surveys on fears about violent extremism repeatedly suggest that the concern about terrorism and the threat of violent attacks continues to grow rather than abate.

One would thus presume that with the terrorist threat plaguing our everyday lives, the international community would have already come together to categorically identify and define the phenomenon in order to systematically quell it. Yet despite the game-changing events of 9/11, the development of extremist transnational groups like the Islamic State of Iraq and the Levant (ISIL; also known as the Islamic State of Iraq and Syria or ISIS), and the remarkable number of terrorist attacks and fatalities since 9/11, there remains an absence of a comprehensive, universal, and legally binding definition of terrorism to guide the international state system in its counter-terrorism efforts.

For decades - since the “golden age” of terrorism of the 1970s (Bergen 2015)⁹ - political, security, and social science theorists have offered extensive and critical explanations for this lack of a conceptual consensus around the term. With no conclusive

⁸ From “Views from around the Globe: Countering Violent Extremism.” Online survey conducted by the Center for Strategic and International Studies from August 12-29, 2016 by the National Research Group (NRG). Available at <https://www.csis.org/analysis/survey-findings-global-perceptions-violent-extremism>.

⁹ From the article “The golden age of terrorism.” Available at <http://www.cnn.com/2015/07/28/opinions/bergen-1970s-terrorism/>. Accessed January 24, 2017.

answer to this puzzle, and hence no single definition of ‘terrorism,’ scholars of the phenomenon have often simply assumed and operationalized the concept to suit the purpose of their work (Weinberg, Pedhazur, and Hirsch-Hoefler 2004).

On the policy front, a similar puzzle for analysts exists. There are currently 19 international legal instruments to prevent “terrorists acts” covering, *inter alia*, offences on aircrafts, threats to civil aviation, nuclear terrorism, terrorist bombings, and the financing of terrorism, with the very first international legal instrument conceived in 1963.¹⁰ Nevertheless, despite the existence of copious theoretical work on terrorism and what it means, as well as multiple United Nations (UN) conventions dealing with “terrorist acts” on an operational and practical level, the world is far from addressing terrorism through the use of a common, objective definition of the phenomenon.

This is not to say that there have been no attempts to define terrorism in international discourse. Efforts to achieve a comprehensive and binding international treaty to suppress and prosecute terrorism have existed for years. The most far-reaching one has been the proposal launched by the UN Ad Hoc Committee established by Resolution 51/210 of 17 December 1996 on Terrorism. The proposal was for the international organization to adopt a United Nations Comprehensive Convention on International Terrorism (*hereafter* UNCCIT) that would clearly define terrorism and set standards on how to address international terrorism. However, due to issues surrounding

¹⁰ The first instrument was presented in 1963 as the Convention on Offences and Certain Other Acts Committed On Board Aircraft. These instruments are open to all member-states for signature and ratification, and were conceptualized under the auspices of the United Nations and the International Atomic Energy Agency (IAEA). Available at <http://www.un.org/en/counterterrorism/legal-instruments.shtml>.

the definition¹¹ of the very act it aims to suppress, the negotiations among UN member-states on this proposed accord – one that would ultimately criminalize all forms of international terrorism and deny perpetrators of terrorist acts and their associates access to funds, arms and safe havens – are currently deadlocked. Ever since the talks on the proposed convention gained traction in 2001 after the 9/11 attacks, the debate has perennially boiled down to a fundamental disagreement not necessarily on *what* act qualifies as terrorism, but rather on *who* can commit terrorism and on what grounds. The question revolves around whether terrorism should be understood as political violence “from below” by non-state actors, or whether such violence can also be committed “from above,” by states against their citizens or citizens of another state pursuant to particular national interests. This controversy over who or what entities can commit terrorism, against whom it is committed, and for what ends, has largely characterized the UN discourse on the matter. More significantly, it has also served as a major roadblock to the

¹¹ The definition of the crime of terrorism which has been on the negotiating table of the UN Comprehensive Convention on International Terrorism reads as follows:

"1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act."

(United Nations General Assembly, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Sixth session (28 January-1 February 2002), Annex II, art. 2.1)

implementation of meaningful global prosecution of those who commit acts of international terror based on a single, legally binding definition.

Arguably, this definitional ambiguity in the international discourse on terrorism within the UN has resulted in varying national-level interpretations of existing conventions to suppress terrorist acts. The current UN Global Counter-Terrorism Strategy (A/RES/60/288) adopted by consensus in September 2006 serves as a guide for states but does not set strict operational counter-terrorism standards for national implementation to which each state must adhere. While this strategy is characterized by the UN Counter-Terrorism Implementation Task Force as a “unique global instrument to enhance national, regional and international efforts to counter terrorism”¹² it still fails to address the fundamental dilemma in the terrorism/counter-terrorism discourse as it presents no categorical definition of terrorism itself. The document simply couches the operational plan of action on a condemnation of “terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security” (A/RES/60/288, Annex: Plan of Action).

While the international community is currently engaged with on-the-ground operations to quell the terrorist threat on the national level context, with each UN member-state recognizing the UN Global Counter Terrorism Strategy and enacting its own national laws against terrorism, it seems that the urgency to develop and enact an international convention that plainly defines terrorism for normative, conceptual and operational

¹² UN Global Counter-Terrorism Strategy. Available at <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>. Accessed on February 2, 2017.

purposes has abated. More importantly, the deadlock on the UNCCIT negotiations shows no sign of being resolved anytime soon. Given these circumstances - coupled with the constant yet ever-changing threat of terrorism - I believe that it remains important to understand the ramifications of not being able to identify what exactly it is we are up against. Having no standardized, legal definition of terrorism at the inter-state level might lead to the indiscriminate enforcement of treaties on terrorist acts agreed upon by UN member-states, with the implementation of such counter-terrorism policies subject to myopic political interests. If such is the case, the enforcement of the global counter-terrorism strategy might become vulnerable to political and human rights abuses.

It is within this context that I embark on an examination of the definitional problem of terrorism within the larger international terrorism discourse. By examining the negotiations surrounding the proposed UN Convention on International Terrorism, the discussions at the UN between and among states on security and terrorism after 9/11, and their state policies in relation to terrorism, I intend to uncover the impact of power relations and state networks on the international terrorism discourse - and ultimately provide a sociological analysis of why terrorism has not been categorically and distinctly defined by the international community despite its constant threat.

Conceptual and Theoretical Framework for the Study: An Overview

While dominant rational choice scholars have attempted to answer the main question of this study by merely focusing on the weighting of foreign policy and national interests of states, I posit that such explanations do not necessarily provide a complete

picture of how the power dynamics between and among states (and their representatives) impact the UN negotiations - and overall discourse - on terrorism and counter-terrorism. Rational choice analysts assume that actors are always motivated by the wants or goals that express their 'preferences,' and that they engage in a cost-benefit analysis based on the information they possess within specific, given constraints (Scott 2000: 127). Yet, given that we have limited information and intelligence about government interests, I would argue that game theoretic models and strategies based on cost-benefit analyses of competing actors in this context will always be limited by the researcher's interpretations of meanings and interests.

Analytical dependence on the weighting of recent national interests and foreign policy also leaves no room for the nuanced influences of culture, ideology, or history in assessing preferences and interests. Although one can argue that culture, ideology and historical influences can be packaged as interests in themselves, the malleable nature of these elements is lost once when they are quantified and boxed into static rational models. It would be ideal to systematically and quantitatively explain the behavior of states, but assuming perfect information about interests of highly dynamic and covert entities such as states will only take us so far in any analysis.

Rather than presenting an analysis based on the quantification of interests and preferences, I intend to qualitatively apply the sociological concepts of states, discourse and power, as well as draw on the theoretical lens of Bob Jessop's (1990) strategic-relational approach to examining states, when assessing the strategic political processes engaged in by UN member-states to define and frame terrorism.

Fundamental to Bob Jessop's (1990) strategic-relational approach to examining states is his belief that the state is not a fixed, static entity that mediates class interests or acts on its own; rather, he posits that the state is a result of social struggles and the balancing of social forces. Highly critical of the limits of the structuralist-instrumentalist debate between the Marxist theorists Poulantzas and Miliband (1972), which was primarily about the nature of the state, as well as Skocpol's (1985) theory of state autonomy, Bob Jessop (1990) argues for a more general state theory of "societization or *society effects*." His alternative - the 'strategic-relational approach' to understanding the nature of the state - is thus fundamentally a theory that seeks to "integrate a relational view of the state with the Marxist form-analytic account of capital as a social relation" (Jessop 1990:4). In this view, the capitalist state must be viewed as a social relation, similar to Marx's (1849) conceptualization of capital as "not a thing"; for just as the capital relation is constituted through value in the spheres of production and circulation, the form of the capitalist state is also made possible by its "particularization" or institutional separation from the circuit of capital (Jessop 1990: 206).

In this strategic-relational theory of the state then, state power is considered to be a form-determined social relation in that it is a function of constant interactions and struggles between the state and society. As such, an analysis of the state is only complete if it considers first, the distinctive institutional form(s) of the state and, second, how the balance of political forces is influenced by factors beyond the state, i.e., by *society*. Jessop's (1990) strategic-relational approach ultimately sees the relationship between state and society as not simply one-dimensional, but rather highly contingent, with political and socio-institutional forces always being balanced in the relationship. This interaction

between state institutions and factors external to the state brings about three certain *state effects*: organizational coherence, functional coordination and operational unity within the state.

Understanding that these state effects are crucial to the development and maintenance of state power not only in the national context but more so in the international state system is an important foundation to the analysis at hand. By viewing the state as a dynamic product of international relations and networks (and not just an isolated actor operating in a vacuum), we might be able to more effectively and sociologically appreciate the impact of social and political forces that have shaped and continue to shape the inter-state power relations in general, and the international terrorism discourse in particular.

Organization of the Study

This chapter has introduced the sociological issue-of-focus for this study, which is the absence of a comprehensive, universal and legally binding definition of terrorism in the international (UN) discourse despite the ever-present threat of extremist political violence. It has also presented the main research question and hypotheses to be explored, and the conceptual and theoretical framework that will be applied to the present analysis. The significance and possible contributions of this study were also highlighted in the current chapter.

Chapter two elaborates on the links between states, power and discourse, particularly the terrorism discourse, as presented in sociological literature. Studies that straddle political science and security studies are included in the review to illustrate the interdisciplinary nature of the discussion. The chapter provides an examination of the

terrorism discourse by first unpacking the conceptualization of terrorism (and *acts of terrorism*) within the academic discourse, and then within policy circles. It then goes on to elaborate on the role of states - as actors that struggle for power in the international state system - in framing the terrorism discourse within the global political arena. It is important to note that framing and dominating international political discourses can be a source of state power. Since discourses are expressions of power as a social relation and a process that can be mobilized to shape and define social realities (Foucault 1980; 1972), their use (or manipulation) as a tool to gain and maintain sovereign power must necessarily be examined. The chapter closes with a conceptualization of the 'state project' (Jessop 1990) as a tool employed by states to shape the global terrorism discourse. State projects are historically contingent strategies that endeavor to organize the activities of the state (e.g., strategies, laws, policies) around a coherent political-economic agenda, which can then be projected onto civil society (Jessop 1990: 9, 346). The review of this concept provides a solid foundation for the subsequent analysis of how states use the terrorism discourse to secure and maintain power.

Chapter three discusses the data and methods employed in this study. As a project that employs a mixed methods approach, the selection and use of content and discourse analysis, interviews, observations, and social network analysis are all discussed in turn. Data gathered for the analysis are also identified and discussed.

Chapter four presents the empirical background of the case at hand: how terrorism has been conceptualized in the international political system. In particular, it examines the conceptualization and operationalization of the phenomenon within the United Nations. An overview of the origins of 'terrorism' as a concept within the

international discourse is provided through a historical examination of its application in global policy-making activities. With the assumption that the discourse on terrorism gained significant traction after the events of September 11th, 2001 (9/11), the chapter examines the UN terrorism discourse in two phases: first, as it developed in the context of counterterrorism efforts before 9/11; and second, how it evolved in the context of a global counterterrorism strategy after 9/11. The chapter ends with the introduction of the United Nations Comprehensive Convention on International Terrorism (UNCCIT) and an explanation of the definitional debate that has led to the deadlock in the negotiations on the proposed convention.

The empirical findings of this study are summarized and discussed through Chapters five, six, and seven. Analysis of the data reveals three major findings: Firstly, defining terrorism and shaping its discourse is a function of 'state projects' engaged in by states to secure and maintain power in the international system; secondly, networks and alliances of states serve as significant avenues through which these state projects – as well as political and ideological interests – are propagated, consequently contributing to the deadlock in the UNCCIT negotiations; and lastly, the definitional debate on terrorism is a struggle for state power more than a problem of semantics; framing and manipulating the terrorism discourse is used as a tool to gain and maintain power in this process.

Chapter five focuses on how states engage in efforts to define terrorism in international discussions as part of a 'state project' - a strategy concerned principally with the attainment of various non-economic objectives including but not limited to military success, social reform, political stability, or moral regeneration (Jessop 2014).

The chapter examines why and how controlling the definition and discourse on terrorism has become a necessary tool for state formation, cohesion, and hegemony (Jessop 1990) not only nationally but more so globally, and how it has become part of a strategy to influence decision-making processes at the UN, or otherwise affect the larger global policy agenda.

Chapter six deals with the definitional deadlock by looking more closely into the role of politics, ideology and alliances within the United Nations. Here, an analysis of how networks among states - carried out through political or voting blocs - continually and significantly influence the discourse and struggle for state power.

The analysis is then completed with an examination of how the definitional debate has become a function of the struggle for state power. In Chapter seven, that link will be examined by focusing on how states shape and manipulate discourse as power. Examining the discursive practices of informal consultations and human rights and legalistic framing used by states, I shed light on processes by which states are able to gain positions of political strength relative to others in the definitional debate on terrorism.

The study concludes in Chapter eight with a discussion of whether or not a categorical, universal and legally binding definition of terrorism should be a goal of the international community to begin with. Should having a global consensus be a necessary objective that we should work towards? If so, are there areas of compromise that might be gleaned from this analysis that could be useful for negotiations moving forward? If not, are the current international legal instruments against terrorism enough to quell the terrorist threat? The final section will seek to respond to these questions with the findings

of the present analysis in mind. It will also look into possible avenues for future research concerning the link(s) between states, power, and the terrorism discourse.

Ultimately, the hope is that the findings and analysis of this study could contribute to a deeper understanding of the global terrorism discourse and how we might - as members of an international community - more effectively navigate structures and institutions of (state) power to more effectively counter the transnational terrorist threat.

CHAPTER 2. CONCEPTUAL AND THEORETICAL REVIEW: The Terrorism Discourse, States and Power

The Origins of the Terrorism Discourse

Terrorism is hardly a new idea. While the long-standing, pedestrian interpretation of the word refers to a strategy of spreading fear through violent and destructive means for social, political, or religious ends (Burgess 2003), the term formerly held a positive, value-laden connotation (Howard and Sawyer 2011: 4). The act was initially seen as a legitimate state instrument carried out by Maximilien Robespierre in post-Revolutionary France to protect the new government from subversives. It was a political strategy supposedly aimed at protecting justice and democracy at a time when the French Republic was at its infancy. This ultimate goal, however, provided the French state with the authority and justification to engage in “victimage rituals” of public torture and pre-modern forms of warfare (Blain 2009:109) as they executed about 40,000 people by guillotine (Burgess 2003; Howard and Sawyer 2011: 5). As a result, the strategy was criticized and subsequently demonized by European philosophers of the time who referred to this period of the revolution as ‘*regime de la terreur*’ (reign of terror) – the phrase from which the current negative conception of terrorism has its roots (Burgess 2003: 2; Blain 2007).

Yet while terrorism as a concept emerged from the actions of the state and was associated with abuse of office and power, the post-revolution discourse on the phenomenon was founded on an anti-state, anti-monarchical sentiment as a reaction to

the alienation and exploitative conditions of nineteenth-century capitalism (Howard and Sawyer 2011: 5). The subsequent rise of nationalist and separatist movements that engaged in attacks and assassinations of state leaders up until the first World War led the discourse of terrorism to refer to the phenomenon as violence against governments. This shift would prove the concept of terrorism to be “tactically polyvalent;” i.e., terrorism became known as a strategy of political violence that could be employed by the “savages” or “dangerous classes” of society against state apparatuses (Blain 2007: 109); but simultaneously, it was also a tactic that could be used by repressive regimes against their people (Howard and Sawyer 2011:9-10).

Despite this conceptual polyvalence, the focus of policy and scholarly work on terrorist acts has leaned more toward those acts committed by individuals and groups outside and against the state. Terrorism evolved into a category that distinguished between illegitimate political violence carried out by non-state actors on the one hand, and legitimate violence or use of force committed by the state on the other. As a result, those who engaged in collective violence against the state could be vilified and criminalized as terrorists (Blain 2007: 110) with governments largely being excused. Such discourse that focuses on non-state terrorism is what has shaped and continues to shape discussions of terrorism and counter-terrorism at the global level, particularly within the halls of the United Nations.

Thus, notwithstanding the shared international conviction that terrorism is an act to be condemned, no comprehensive, universal, and legally binding definition of the concept is in place due to its “essentially contested” nature (Gallie 1969 and Connolly 1993, cited in Weinberg, Pedhazur, and Hirsch-Hoefler 2004; Ganor 1998; Williamson 2009; Schmid

2011). The various forms that terrorism has taken throughout centuries has led to conceptual problems both legally and academically (Williamson 2009; Schmid 2011) so much so that when terrorism reemerged as a leading research subject in the late 1960s and early 1970s, analysts immediately recognized that the achievement of a wide agreement on a single definition posed a serious challenge to the field (Weinberg, et al. 2004: 777). Lacquer (1977:5, cited in Weinberg et al. 2004: 778) observes that because terrorism has appeared in “so many different forms and under so many different circumstances,” arriving at a comprehensive definition is simply “impossible.” Sociologist Philip Schlesinger (1991, cited in Schmid, 2011: 40) even argues that “no commonly agreed definition can in principle be reached, because the very process of definition is itself part of a wider contestation over ideologies and political objectives.”

Indeed, literally hundreds of definitions of terrorism saturate the fields of political science, law, security studies and – more recently – sociology¹³ (see Schmid 2011; Record 2003; Schmid and Jongman 1988 for a list of these definitions). Studies on proposed academic definitions of the term have shown that there are at least 22 definitional elements to terrorism that exist in the literature (Schmid and Jongman 1988; Weinberg et al. 2004).¹⁴ Such attributes of the phenomenon are believed to be sensitive to location, history, power, moral perceptions, international relations, and military capabilities of states (Vertigans

¹³ Sociological interest in terrorism saw a rapid spike immediately after the tragic events of September 11, 2001 (Goodwin 2011; Turk 2004:271). Prior to this, terrorism was largely seen as a political act, and thus within the scope of political science (Vertigans 2011: 13).

¹⁴ In the Schmid and Jongman (1988) study, a survey of 109 definitions of terrorism were made, while in the Weinberg et al. study (2004), 73 definitions were analyzed from 55 articles collected from three top terrorism journals.

2011: 1). This has led some to posit that the term has become politically and emotionally charged, so much so that it might be the most politicized term in the contemporary political vocabulary (Hoffman 1998; Schmid 2011: 40). This is not to say, however, that the discourse on terrorism is wanting of any points of convergence on definitional issues. A large majority of extant definitions of terrorism recognize that an act of terror intrinsically involves the use of violence or threats of violence by its perpetrators (prominent examples are those offered by Schmid 1988; Weinberg et al. 2004; Hoffman 2004; Tilly 2004; and Goodwin 2006 to name a few; see *also* Gage 2001, and the surveys conducted by Schmid and Jongman 1988, and Weinberg et al. 2004). There is, however, a clear lack of consensus when it comes to defining terrorism in terms of its motivations, its targets, what forms it may take, and who can qualify as possible perpetrators.

Since terrorism has been widely used as a tactic against government policies or leaders, experts and policymakers alike have primarily characterized it as an act of political violence; that is, it contemplates political aims and motives, or is otherwise used for political effect or propaganda outside the usual means of political struggle (Vertigans 2011:13; Tilly 2004:5; Turk 2004: 273; Weinberg et al. 2004: 778; Hoffman 2004). Yet researchers have found that political reasons were not the only motivations recognized by experts (Schmid and Jongman 1988; Weinberg et al. 2004); rather, other “idiosyncratic” and “criminal” motivations pursued through violence could also characterize an act as ‘terrorism.’ The pursuit of publicity (Weinberg et al. 2004: 782) as well as adherence to religious motivations (Burgess 2003; Blain 2007), for instance, can also be possible incentives for a terrorist. But where does one draw the line between a simple violent criminal act on the one hand, and terrorism as political violence on the other?

Some theorists posit that the distinction lies in who or what terrorism targets. The fact that the phenomenon is largely perceived as politically motivated violence against the state leads most definitions to assume that acts of terror are those committed to harm solely the government and its agents. However, some scholars argue that for terrorism to be labeled as such, it must have consequences that extend beyond the state to the detriment of innocent citizens (see Ganor 1998; Turk 2002; Carr; 2003; Goodwin 2006; Schmid 2011). In essence, these scholars agree that an essential attribute of terrorism is that the direct victims of such violence are not its main targets. Hoffman's (2006) list of common characteristics of terrorism does not explicitly declare civilian targets necessary for an act to qualify as terrorism; but the mention of the fact that terrorism is meant to have "far-reaching psychological repercussions beyond the immediate victim or target" speaks to the necessary condition of having victims who are not associated with the state.

Goodwin (2006: 2028) presents a clearer argument in his "categorical definition" of terrorism, suggesting that the phenomenon involves the strategic use of violence and threats of violence by an oppositional political group *against civilians or noncombatants*, usually intended to influence several audiences (emphasis mine). Without injury to innocent civilians, this school of thought maintains that the act cannot categorically be named terrorism. Such a view also allows for possible distinction between terrorism on the one hand, and guerilla warfare or other forms of political violence on the other (Weinberg et al. 2004). This attribute (of having civilian victims) is often – if not always – present in definitions of terrorism as found in national laws and counter-terrorism policies, including that of the United States State Department (Ruby 2002) and existing UN counter-terrorism conventions.

However, this victim-target differentiation does not appear to be an overwhelming characteristic found among academic definitions of terrorism within the past decade. Weinberg et al. (2004:781) found that only 25% of the 73 scholarly definitions they surveyed mentioned its importance, with injury to civilians, noncombatants, neutrals, and outsiders being considered only 22% of the time. The question of victim-target differentiation is perhaps trumped by a more recent and increasingly polarizing issue in the academic and legal definitional debate: whether or not terrorism is something that can be engaged in by states, and not merely by non-state actors.

The general and long-standing discourse on terrorism has largely focused on non-state terrorism; that is, scholars have focused on acts of terror as committed by extreme non-state political entities – individuals, cadres, organizations, or networks *against states* (Schmid 1992; Hoffman 2006; Tilly 2011; Del Villar and Glasberg 2015), with some arguing that this is due to the inadequate evidence that states actually sponsor or engage in terrorism in several historical cases (Adams 1986, cited in Turk 2004), or implying that ‘state terrorism’ is a misnomer or a term that needs to be distinguished from “terrorism proper” (Goodwin 2006 citing Hoffman 1998; Black 2004; and Bergesen and Lizardo 2004). Yet the exclusion of state terrorism from conceptual and operational definitions of terrorism – both in scholarship and in the practice of governments – has been largely criticized (Stampnitzky 2011: 2; see critiques by Herman 1982; Herman and O’Sullivan 1990; Chomsky 2001). Such an understanding of terrorism fails to consider that competition over economic resources and power, as well as resistance to domination and repression in the international system, can also increase the incidence of terrorism from above, i.e., as perpetrated by state actors (Del Villar and Glasberg 2015) and not just from

below (Jalata 2010). With each country having its own interpretation of the phenomenon in its penal code, and the UN having conventions that focus on non-state perpetrators, what is considered terrorism is thus relative and largely dependent on how a state constructs or frames the “act of terror” (Del Villar and Glasberg 2015: 5). Terrorism is thus considered a pejorative term that is essentially politically and emotionally charged (Hoffman 1998).

Following this premise, sociological analyses of terrorism have therefore contributed the idea that the phenomenon is a social construction (Ben-Yehuda 1993; Turk 2002); and contrary to the impression promoted by media and government reports that terrorism is a “given in the real world,” it is instead an interpretation of events and their presumed causes (Turk 2004). Turk (2004: 271-2) further argues that these interpretations “are not unbiased attempts to depict truth but rather conscious efforts to manipulate perceptions to promote certain interests at the expense of others.” For this reason, the discourse on terrorism can be understood as a “war of words” between and among powerful government entities that seek to control global discussions on global security issues to favor their interests; that is, governments “generally succeed in labeling their more threatening (i.e., violent) opponents as terrorists, whereas attempts by opponents to label officially sanctioned violence as “state terrorism” have little chance of success unless supported by powerful third parties such as the United Nations (Turk 2004: 271-2). Hence, in order to reify state power in the international arena, the global discourse on terrorism is necessarily a state-constructed and driven one. With this in mind, we now turn to understand the nature and role of the state vis-a-vis the production of discourse, particularly with regard to terrorism.

States, Power, and Framing the Terrorism Discourse

The state is arguably referred to as the dominant institution that shapes social structures and determines the flow of power within and among different areas of society. As a political association that claims the monopoly over the legitimate use of force to compel order (Weber 1978a: 54; Weber 1978b: 78), the state has accordingly been viewed as the central site of political, military and economic power in society (Pierson 2011). A state does not exist in isolation however; it necessarily belongs to a wider system of competing states with each one protecting its sovereignty, or its ultimate power over its governed territory (Pierson 2011: 10; Giddens 1985: 263-64). Hence, each state seeks ways to establish and maintain its global power, with the ultimate goal of balancing power relations among other countries in the international political arena (Waltz 1978).

The respect for the sovereign power of states has been the canon on which international relations operates. As a result, the affairs between states, as illustrated by dealings at the United Nations, have been characterized as a constant struggle for power driven by national interests (Morgenthau 1978: 27, 5). Realist thinkers in fact posit that states fail to cooperate even in the face of common interests because they are predisposed towards conflict and competition over power (Keohane 1989; Pierson 2011: 142). The art of government is consequently about maximizing the power of the state (Foucault 1994 cited in Pierson 2011); and this argument is clearly given credence at the UN level as seen through the perennial debates over a member-state's voting power in the General Assembly and, more significantly, in the Security Council (O'Neill 1996). Thus, when it comes to addressing what it supposedly an easily identifiable area of common interest – in the present case, defeating terrorism – the challenge of achieving a universal,

comprehensive, and legally binding definition of the phenomenon is shaped not only by the unique set of security and foreign policy interests of states, but more significantly by each state's struggle to achieve power and dominance as a sovereign entity in the international community. And with terrorism being a staple of international security concerns, controlling the discourse on the topic appears to be imperative for a state to overcome this struggle.

Theoretically, framing and dominating international political discourses can be a source of state power. This is because discourses are expressions of power as a social relation and a process that can be mobilized to shape and define social realities (Foucault 1980; 1972). Foucault (1969) states that discourse is “an entity of sequences, of signs, in that they are enouncements (*énoncés*)” – an abstract construct that can assign and communicate specific, repeatable relations to, between, and among objects, subjects, and statements. According to Foucault, discourses are knowledge systems that define norms of behavior and thought, as well as the meanings that are attached to people and institutions that adopt (or do not adopt) these norms. Power operates through discourses because those who have the ability to produce these systems of knowledge - and determine meanings and behavior - are necessarily able to do so because of their social status. The discourses that are created and manipulated consequently produce and reify power.

In theories about the link between linguistics, culture, and power, a discourse is generally understood as the production of knowledge through language and meaning. Discourse, in its original sense taken up by linguists, refers to stretches of language above the level of the sentence in conversation or written texts (Young and Ortega 2009: 2). It

has since taken up an expanded sense to refer to societal meaning-making systems (e.g. institutional power, social differentiation groups, and cultural beliefs) that create identities for individuals and determine their positions in social relationships (Young and Ortega 2009:2).

In this sense, discourse as knowledge and meaning production does not solely involve the construction of words and meanings in a vacuum; rather, discourse is itself produced by what linguists refer to as “discursive practice” (Hall 1997, 1992). Here, ‘practice’ refers to “the construction and reflection of social realities through actions that invoke identity, ideology, belief, and power” (2009:1) and is not merely a repetition of a particular act or practice. Meaning is constructed and negotiated through recurring face-to-face interactions within a particular context; that is, the creation of meaning - and ultimately a discourse - takes places within the network of physical, spatial, temporal, social, interactional, institutional, political, and historical circumstances where participants “do” or perform a practice.

Young and Ortega (2009: 2) thus observe that discursive practice provides four important insights about discourse as a meaning-making system that determines social position and relationships: first, social and cultural meanings and realities are linguistically/discursively constructed; second, discourse is always context-bound; third, discourse is all about social action; and fourth, meaning is constantly negotiated in interaction rather than being present “once-and for-all” in whatever we say (Young and Ortega 2009: 2).

With those insights in mind, we might come to understand discourse as an arena that participants can use to control or shape not only meaning, but social action and

conduct. Consequently, we can conclude that all social practices possess a discursive aspect (Hall 1992: 291). The power in discourses thus lies in how they operate as a set of rules informing what we think and do (Powell 2013). But more importantly, since the knowledge produced by the discourse influences social practices, its power lies in it having real consequences and effects (Hall 1992: 205). Applying these assumptions beyond the individual level into the inter-state level, it can be argued that discourses are highly effective tools of wielding social power.

Power involves an element of domination, coercion, oppression, or preemption – with the latter conducted by politically socializing people into blindly accepting assumptions, frames and viewpoints – (Airaksinen 1992; Young 1992; Lukes 1974). Further, power has been defined as a position and a relationship situated in a social setting (Lukes 1974; Wartenberg 1992). Therefore, control over a particular discourse in international affairs – that is, the ability to influence thought and practice on a specific global issue – could very well obtain power in the form of diplomatic, political, economic, or military clout for a certain state. Hall (1992) fittingly describes this interrelationship between discourse and power:

“[Discourse] is one of the systems through which power circulates. The knowledge which a discourse produces constitutes a kind of power, exercised over those who are “known.” When that knowledge is exercised in practice, those who are “known” in a particular way will be subject (i.e. subjected) to it. This is always a power relation (see Foucault 1980:201). Those who produce the discourse also have the power to *make it true*—i.e. to enforce its validity, its scientific status (204-5, emphasis and citations in original).

Applied to state relations at the UN level where diplomatic negotiations on politically and emotionally charged issues occur on a daily basis, dominating discourses arguably allows states to command power in the international stage both in theory and practice. Without

gaining political clout, a state would be unable to influence important decision-making processes at the UN, or otherwise affect the larger global policy agenda.

When it comes to the discourse on terrorism, it is important to note that the phenomenon has been clearly operationalized pursuant to various national interpretations, with some states seeking to dominate the conversation more than others as either colonial, political, or economic powerhouses (Del Villar and Glasberg 2015: 6). As a case in point, the “War on Terror” framed, led, and adopted by the United States in line with its national security strategy after the events of September 11, 2001 has been largely accepted—at least rhetorically—as the defining characteristic of global counterterrorism efforts, even within the chambers of the UN (Del Villar and Glasberg 2015: 6-7). This influence on the terrorism discourse at the UN has arguably made it possible for the conversation between member-states, and their subsequent decisions and actions, to focus on terrorism committed by those outside the state.

Controlling the terrorism discourse by defining the concept and operationalizing the mechanisms to combat the threat can thus be perceived as a hegemonic ‘*state project*’ (rather than a concerted global endeavor) to establish and maintain power over security issues in the foreign policy arena. A state project is a strategy (carried out by a state) that is concerned principally with the attainment of various non-economic objectives including but not limited to military success, social reform, political stability, or moral regeneration (Jessop 2014). It is therefore a necessary tool for state formation, cohesion, and hegemony (Jessop 1990) not only nationally but more so globally. Since each state technically has the liberty to define terrorism and formulate laws or policies in line with such a definition – albeit adhering *in principle* to the UN Global Counter-Terrorism Strategy – the processes

by which a state defines and prosecutes terrorism reflects particular political interests, and ultimately becomes an instrument of state power and hegemony through its implementation. In order for the analysis in this study to be more robust, it is crucial at this point to delve deeper into the concept of the state project as theorized by Jessop (1990), as well as its relevance as a tool in understanding the role of states in shaping the global terrorism discourse.

Theories of the State and Jessop's Strategic Relational Approach: Understanding the 'State Project' Framework

The state is arguably the single, most ubiquitous socio-political institution in modern society. Its omnipresence in daily life has unsurprisingly led to the formulation of a multitude of theories about its nature, functions, structure and, most importantly, the relations of power on which it thrives.

One school of thought that seeks to explain power relations within the state is Pluralism. This theory focuses on the interaction of diverse interest groups in politics to explain the power dynamics of modern democratic states. For pluralists, power is fragmented across various associations; thus, competition and compromise define political processes. Scholars who subscribe to this school of thought (see Lipset 1960; Rose 1967; and Dahl 1987) acknowledge the value of pluralism for democracies. They assume that participation in political life through various associations is vital to the balance of power – and ultimately, stability – in a democratic state. The assumption that there is a relatively equitable distribution of power in a state has been vehemently challenged by critical state theorists who have generally ascribed to the tenets of Marxian political thought (see Barrow 2000; Prechel, and Akard 2005 for an overview of these arguments).

These scholars have in one way or another sought to debunk the theory of equal power distribution by demonstrating the significant influence of capitalism, as well as the power of class and business interests, on the operations of the state.

Those who subscribe to Marxist political theory, however, have not always been in agreement when it comes to the nature of the state. The most prominent debate within this circle is the exchange between Ralph Miliband and Nicos Poulantzas (Miliband 1969; Poulantzas and Miliband 1972 in Blackburn), which was significant because of its theoretical as well as practical implications at a time when the world was immersed in the Cold War and the relevance (even legitimacy) of Marxism as a theoretical approach.

Miliband was a proponent of instrumentalism, which is founded on the belief that the durability of the state can be attributed to it being an instrument of dominant class interests - one that is meant to be of service to the capitalist class. Miliband wrote:

“The state in these class societies is primarily and inevitably the guardian and protector of the economic interests which are dominant in them... its ‘real’ purpose is to ensure their continued predominance, not to prevent it (Miliband, 1969: 22).

Poulantzas reviewed Miliband’s work and instead proposed a structuralist view, arguing that the relation between the bourgeois class and the capitalist state is actually an “objective relation” (1969:73). This assumes that the state exists – and persists – for a specific reason in relation to the entire system; that is, it is there to protect and reproduce the social structure of capitalist societies (Mandel 1978 cited in Barrow 1993) regardless of class interests. That the interests of the ruling class and the role of the state coincide is a function of the system itself:

The relation between the bourgeois class and the state is an objective relation. This means that if the function of the state in a determinate social formation and

the interests of the dominant class coincide, it is by reason of the system itself: the direct participation of members of the ruling class in the state apparatus is not the cause but the effect... (Poulantzas, 1969: 73).

Miliband then criticized the structural approach by claiming that the approach left no room for agency and was too limiting of a view on how the state operates.

The Miliband-Poulantzas debate only sparked more scholarly discussion on the role of the state in social life. More recently, state-centered theorists have joined the discussion, arguing that the most effective starting point of any analysis of the state's role in daily life is this assumption: The state has "potential autonomy" (Hooks 1993: 39) and has the ability to structure social and political life independent of the interests of the dominant class. The reason for this autonomy, state-centered theory proceeds, is that the state is an actual organization that seeks to control a territory and its people (Skocpol 1979, cited in Barrow 1993). Corollary to that, since the state has the monopoly of the tools of coercion, its main objective is to maintain military power towards the protection of its sovereignty and authority over a territory. Ultimately, dominant class interests do not dictate state behavior.

State-centered theory has its roots in Theda Skocpol's state autonomy theory, which posits that states – as organizations or bureaucracies – could have potential for autonomous operations outside the influence of the demands or interests of social groups, classes, or society (Skocpol 1985). Skocpol believes this view has largely been ignored by social scientists, especially Marxist-oriented ones, who have analyzed the relationship between politics and economics within capitalism through a society-centric lens (i.e., viewing the state as inherently shaped by classes or class struggles, and functioning to preserve modes of production). According to Skocpol, viewing states as independent

actors, tied together within an international network, is more relevant – and effective – especially in the post-WWII historical context. Instrumentalism or structural Marxism, for instance, would not be able to explain why and how states fiscally behaved the way they did funding military operations during the war, rather than focusing on keeping certain industries alive. State-centered theory, on the other hand, allows analysts to consider the effect of political structures and activities, political culture, or collective political action on society. And since state-centered theory believes in using historical, comparative analyses of states to understand these effects, Skocpol argues that the theory can move us beyond the understanding of the state in a national setting (which is the focus of instrumentalism and structuralism) by telling us about states in transnational contexts (Skocpol 1985) – a view that further shapes the state as a rational actor in the international state system. State centric approaches to understanding the state have also been criticized for its failure to take into account the role of elites, state managers, or institutional variations in the state system (see Domhoff 1991; Barrow 1993; Hooks 1993).

Of relevance to this study is the critique by Bob Jessop (1990) of the theories of the state previously discussed in this section. Highly critical of the limits of the structuralist-instrumentalist debate between Poulantzas and Miliband, as well as Skocpol's theory of state autonomy, Bob Jessop (1990) argues for a more general state theory of "societization or *society effects*." Fundamental to this view is the belief that the state is not a fixed, static entity that mediates class interests or acts on its own; rather, the state is a result of social struggles and the balancing of social forces. He thus presents a 'strategic-relational approach' to the state – a theory that seeks to "integrate a relational view of the state with the Marxist form-analytic account of capital as a social relation" (Jessop 1990:4).

According to Jessop, the capitalist state must be viewed as a social relation, similar to Marx's (1849) conceptualization of capital as "not a thing"; for just as the capital relation is constituted through value in the spheres of production and circulation, the form of the capitalist state is also made possible by its "particularization" or institutional separation from the circuit of capital (Jessop 1990: 206).

In this strategic-relational theory of the state then, state power is considered to be a form-determined social relation in that it is a function of constant interactions and struggles between the state and society. As such, an analysis of the state is only complete if it considers first, the distinctive institutional form(s) of the state and, second, how the balance of political forces is influenced by factors beyond the state, i.e., by *society*. Jessop's (1990) strategic-relational approach ultimately sees the relationship between state and society as not simply one-dimensional, but rather highly contingent, with political and socio-institutional forces always being balanced in the relationship. This interaction between state institutions and factors external to the state brings about certain *state effects*: organizational coherence, functional coordination and operational unity within the state.

What makes Jessop's model distinct from other state theories is that it views these resulting effects not as inherent to the state, but rather as a result of a *relational* process that produces certain effects. Such state effects only emerge through historically contingent *state projects* that endeavor to organize the activities of the state (e.g., strategies, laws, policies) around a coherent political-economic agenda that can be projected into civil society (Jessop 1990: 9, 346). The constant struggles within and around the state system lead Jessop to further posit that the state exercises *strategic selectivity*

in determining political strategies that shape the state's institutional structures and interventions. As such, the state becomes the "site, generator and product of strategies" (1990: 260). As a site of strategies, states are not homogeneous in that some state forms or regimes "will be more accessible to some forces than others according to the strategies they adopt to gain state power" (ibid.); as a generator of strategies, it plays a key role in mobilizing accumulation strategies and developing state projects; and as a product of strategies, its structures, policies, and programs are shaped by and inherited from previous political strategies (1990: 261).

In this entire process, the role of state projects is crucial in that it provides state institutions with the state effects that they need to secure the maintenance of power. State projects allow for organizational coherence, functional coordination and operational unity by making sure that the ensemble of state activities is centralized around one goal or political agenda. By doing so, state projects lead to standardized interventions that not only regulate the flow of capital, but also the balance of power within civil society – and even the globalized state system.

While the concept of state projects has been largely applied to analyses of state activities on the national level, this study attempts to use such a conceptual framework to examine state projects undertaken within the global system of states. Applied to an examination of the international discourse on terrorism as it is constructed and reconstructed at the UN, Jessop's concept of state projects – and his strategic-relational approach – seem apropos given that national interpretations of the term have operationally trumped any of proposed comprehensive definitions that have been tabled by UN member-states. Moreover, in one analysis of the terrorism discourse among policy

experts, Lisa Stampnitzky (2013) observes that terrorism as an act has been constructed by states as “irrational,” and has been widely “delegitimized” as a political tactic employed by individuals or groups - external to the state - against governments. In this sense, state terrorism (or state sponsored terrorism) is immediately excluded in such a conceptualization, with states effectively legitimizing their monopoly of the use of force.

It is fair to argue that state projects to define and redefine terrorism and counter-terrorism have therefore existed for decades, as witnessed through the politically charged definitional debate on terrorism, and particularly, the stymied negotiations surrounding the UNCCIT. For the purposes of this study, it will thus be appropriate and beneficial to apply the strategic-relational approach expounded on above as we seek to understand the trends, dynamics, and structures of domination affecting the formal political discourse surrounding terrorism within the walls of the United Nations.

CHAPTER 3. DATA AND METHODS

This study employs a mixed methods model to examine the research question(s). Since the dissertation focuses on the development of the discourse on terrorism, data will be necessarily gathered from available texts (particularly officially published UN documents, resolutions, or statements) from UN bodies that have dealt with terrorism and counter-terrorism, along with their special committees tasked to address terrorism: the General Assembly - particularly the Sixth Committee (Legal Affairs) with its Ad Hoc Committee established by General Assembly resolution 51/210 on Terrorism and the special Working Committee on international conventions on terrorism; and Security Council, particularly its Counter-terrorism Committee (CTC) and Counter-Terrorism Committee Executive Directorate (CTED). Notes from the researcher's interviews will also be analyzed alongside these documents.

While it will be shown in this study that the terrorism discourse at the UN has existed and been shaped/reshaped since the inception of the organization, the scope of the analysis is on the development of the discourse on terrorism from 1996 – the year that the UN Ad Hoc Committee on Terrorism was established – into the current post-9/11 era. It was in 1996 when the General Assembly began considering a proposed draft convention to prevent and suppress international terrorism - submitted by India - which has never been finalized due to continuing disagreement over the conceptual definition of terrorism. Thus, this particular time frame has been selected given that the definitional debate, which is the core of this analysis, became more salient with the Ad Hoc Committee discussions

in the late 1990s, gained traction in 2000-2001 with the introduction of the UNCCIT by same committee, became prominent after the tragic events of September 11, 2001, and has remained unresolved until today. The period of analysis presents a significant and comprehensive picture of the development and evolution of the discourse on terrorism within the context of the more recent definitional debate within the organization.

Content and Discourse Analysis

Discourses constitute the domain in which subjectivities emerge, and create the conditions for transformations of consciousness and subjectivities (Canning 1994). Discourse analysis is thus necessary in this instance, given the subjectivities involved in the construction of a highly polarizing political concept. In this study, the texts on UN counter-terrorism efforts identified in the previous section may provide insight into the transformation processes of state subjectivities, and how relevant states have conceptualized the terrorism discourse over time. Moreover, textual production at the UN has become a reflection of historical context and meaning. The texts might then provide the context of the discourse, i.e., the political conditions and power struggles present at different points in time that have affected the inability to achieve a comprehensive definition of terrorism.

Alongside discourse analysis, content analysis is also undertaken as the latter focuses on the frequency of words/word combinations to provide a measure of meaning, especially when there is a huge amount of texts to be analyzed. As the terrorism discourse has been shaped and reshaped since the inception of the UN, and the UNCCIT negotiations have gone on for almost two decades, content analysis is needed to identify

and assess *contextual evidence specifically related to the social conditions and power relations* which may have shaped the negotiations on the UNCCIT, and consequently shaped the larger terrorism discourse.

The data collected for this purpose will be from publicly available information or texts on the UNCCIT negotiations or related counterterrorism efforts led by the UN. Most of the data on the negotiations will be from the reports of the UN bodies identified above, but supplemental textual data will also be gathered from available and relevant government reports, and relevant video/audio clips and footage of UN meetings from the UN Web TV website when available and appropriate.

Interviews

Interviews are “guided conversations” that scrutinize meaning, provide a nuanced understanding of the object of study, and elicit specific kinds of information not present in documentary sources (Blee and Taylor 2002). Interviewing can also be designed to investigate organizational and institutional processes (not just individual experiences). Consequently, they can reveal the “relations of ruling” that shape local experiences (Devault and McCoy 2002). Interviewing in this sense is key to revealing the political conditions and power relations within the UN as a political institution. While the focus is on systemic or structural conditions, conducting interviews with specific individuals will be very helpful in understanding the publicly disclosed orientations and ideologies of member-states, as well as officers of the UN. For this purpose, interviews were designed as semi-structured, face-to-face, and informal in order to establish non-hierarchical relations with the respondents (Taylor and Bogdan 1998).

As the goal of this study is to examine the discursive trajectory of the debates on terrorism, particularly with regard to its definition and meaning as shaped by international state power, this dissertation is primarily informed by textual analysis and archival research. The interviews I have gathered for the purpose of revealing the nuances of the politics surrounding the terrorism discourse are thus not meant to be the primary source of data for this dissertation, and as such do not constitute a representative sample. Rather, the information provided by the respondents I contacted and who agreed to be interviewed serve as expert knowledge from resource persons uniquely placed to provide internal insight into the whys and hows of the discourse creation. They are individuals who were directly and specifically working on terrorism and counter-terrorism policy as either state representatives from Permanent Missions to the United Nations, or former or current staff of United Nations divisions involved with the counter-terrorism discussions and negotiations. Their responses then form a very particular, albeit limited, narrative that might be seen as personalized experiences or memories, but those which could corroborate, contradict, or provide nuance to the written texts being analyzed.

Given that there are literally scores of UN officials and Member-States involved in terrorism/counter-terrorism discussions, it was not practical – nor feasible – to interview all of these individuals. Hence, interviewees were invited based on known expertise and experience. Those who accept the invitation were interviewed at their convenience in either New York, Connecticut, or via Skype.

For the UN officials, I targeted participants who were/are professional staff members or officials, with internal grade level of D (Director) or P (Professional). They were contacted through publicly available information by email or phone. Some of the resource

persons were recommended to me by my initial respondents, who I then contacted by email. My expert resource persons served in diverse capacities within multiple UN bodies.

For representatives of Member-States, I interviewed representatives from Permanent Missions to the UN in New York that were heavily and directly engaged in the negotiations of the UNCCIT negotiations through time. While I sought to interview state representatives from every UN regional group (Africa, Asia-Pacific, Eastern Europe, Latin American and the Caribbean, Western Europe and Others¹⁵), with priority given to countries that have a long history and/or experience of terrorist activity¹⁶ the response for my request for interviews was lukewarm. Out of the 12 exploratory and formal invitations I sent to various Permanent Missions, and numerous follow-up calls, I only received two positive responses from States willing to sit and provide expert information with me. While I understand the concern of having only two interviews from the perspective of a state representative, it is important to note that the interviews in this study are primarily meant to provide nuance in relation to information in the primary texts and documents being analyzed, or otherwise be supplements to these documents.

The absence of interviews in this study theoretically would not detract from the validity of the findings and conclusions I make, but would only serve to make those findings more robust. Moreover, the state representative narratives come from the two

¹⁵ The United States of America is not a member of any regional group, but attends the meetings of the Western Europe and Other States Group (WEOG) as an observer and is considered to be a member of that group for electoral purposes.

¹⁶ These countries include but are not limited to Afghanistan, Colombia, India, Indonesia, Iraq, Iran, Ireland, Nigeria, Pakistan, the Philippines, Syria, Thailand, and Yemen. Based on 2013 data from the Global Terrorism Database from the National Consortium for the Study of Terrorism and Responses to Terrorism, the top ten countries with the most terrorist attacks are (from most to least): Iraq, Pakistan, Afghanistan, India, the Philippines, Thailand, Nigeria, Yemen, Syria and Somalia.

general diverging points of view in the terrorism discourse based on my preliminary data - one state that is friendly to the US/Israeli bloc, and another state representing the views of the Organization of Islamic Cooperation (OIC). Having resource persons from these two blocs made it possible to illustrate and highlight the major strands of the discourse and ensuing debates on the definition of terrorism that are reflected in UN texts and resources.

Social Network Theory/Network Analysis

Social network theory simultaneously explores the structure and the content of relations to understand social phenomenon by looking at the ties between and among nodes - individuals, groups, or things - within a network. Scholars who subscribe to this theory and method of analysis conceptually think of these networks the primary building blocks of the social world. Hence, instead of taking the individual as the sole unit of analysis, network analysts are able to collect highly nuanced types of data at the macro and meso levels (and even at the micro level.) Analyzing the connections and patterns of connections within the network helps determine how relations are constructed, how they affect each other, and how they affect the network as a whole.

Scott (1991) observes that the development of social network theory over the 20th century has been shaped by three major lines of research: a) the sociometric analysis tradition, which employs graph theory based on mathematical models; b) the interpersonal relations tradition, which focuses on the formation of cliques among a group of individuals; and c) an anthropology tradition that explores the structure of community relations in less developed societies Liu et. al. 2017: 1). By and large, this study leans toward the second

line of research - the interpersonal relations approach to analyzing networks - and takes it further by applying that tradition to relations between UN member-states in the international state system.

For this study, the objective is to apply social network theory to examine the network of states involved in the shaping of the terrorism discourse and the definition of terrorism to trace what factors might be impacting the deadlock in UNCCIT negotiations. In order to do so, I trace general voting behavior of states relative to what I see from the data as major alliances or political blocs within the discourse. I used data gathered by the United States State Department from 1996 to 2017 from their annual report on Voting Practices in the United Nations to look at the patterns of general voting behavior in the General Assembly and Security Council over time. I also examine official UN documents and government statements on a state's participation in treaties related to terrorism and/or their definition of terrorism. I then attempt to identify the various connections between states based on this textual evidence, and determine the relative extent of the 'power' possessed by each state in shaping the debate.

I had initially planned to apply social network analysis to voting records of states in relation to treaties on terrorist acts, as well as specific UNCCIT provisions. However, voting on treaties at the UN has not been done through a straight "yea" or "nay," as might be found in typical legislative bodies. In reference to taking up international conventions, "voting" is characterized by different stages or "levels" of approval, i.e., after negotiations, Member-States can make reservations to the treaty, then choose to sign, ratify, or accede. This process can take months to years depending on the Member-States' own interests. With regard to UNCCIT votes, no data exists on voting behavior for provisions of the

convention, since the deliberations have not involved explicit voting on the contested parts of the convention. Thus, the raw data from the UN did not present itself as easily translatable into network data that would be ripe for sociometric analysis. Through the course of my data collection process, I realized however, that it would be more analytically useful to focus on the interpersonal model of network analysis, and examine the cliques - or political alliances - and the extent the ties within these subgroups within the UN have stalled progress on a universal definition of terrorism.

Based on my data from the content analysis, I thus focus on the two major alliances largely shaping the debate: States aligned with the Organization of Islamic Cooperation (OIC) on the one hand, and states aligned with the ‘West’ - the Western European and Others Group at the UN including the United States and Israel on the other. While there are other smaller geopolitical alliances at play, these two blocs (based on my preliminary data) represent the major divide in efforts to find a commonly accepted definition of terrorism through an international convention.

Focusing on the states within the two major blocs and examining how discursive patterns play out within those alliances in mind might contribute more to our understanding of how political power shapes the current deadlock, instead of presenting a convoluted web of the voting patterns between and among all 192 Member-States. The social network chapter will thus be more theoretical in approach, applying social network theory rather than present sociometric models of voting among all UN member-states. The analytical goal is to ultimately see the effect of alliances - and their relative power - in determining the nature of terrorism, whether such states can be influenced to do otherwise, and in what ways.

Examining the UN negotiations on the definition of terrorism through social network theory might provide a better understanding of the specific points where negotiations break down, how power and political clout affect the connections and patterns of connections within these negotiations, and what social factors within the international state system contribute to the constant failure of the negotiations. All this will be done with a view to theorizing about possible points of compromise or convergence that may lead member-states to finally come to a consensus on the definition of terrorism, and ultimately be able to develop universal standards and policies on how terrorism can be thwarted and prosecuted under international law.

CHAPTER 4. GLOBALLY DEFINING TERRORISM: Conceptualizing “Terrorism” at the United Nations

The Roots of “Terrorism” as a Political Concept

The concept of terrorism is far from a nascent political creation. Prior to its widespread presence in current national and international discussions, as well as its ubiquity in mainstream public discourse since the tragedy of 9/11, terrorism - as a recognized strategy of spreading fear through violent and destructive means for a social, political or religious cause - has existed for thousands of years (Burgess 2005). It is one of the oldest forms of violence (keeping in mind that not all violence is terrorism).

While some counter-terrorism analysts and experts on the ground have recently attempted to link terrorism with ideology, particularly with jihadism or militant Islamism (see Drake 1998; Chertoff 2008; Bolton 2015; and Stewart 2017 for prominent arguments), Walter Lacquer (2007:2) posits that terrorism is “not a political doctrine, even though some have attempted to transform it into an ideology.” Lacquer claims that terrorism is a strategy used by individuals or organizations to bring about or resist change. He further argues that terrorism as a tactic of violence “probably antedates regular warfare” for the primary reason that carrying out terrorism is “primitive” in that it does not require the sophisticated logistics of armies (Lacquer 2008:2). However, given the militaristic structure and seemingly extensive resources of recent terrorist organizations such as ISIS/ISIL, such an observation might be contentious.

Nevertheless, an important point here is that terrorism has existed even prior to 9/11, and surely predates the terrorist surge of the 1960s to 1970s. The literature might have called such violent (political) acts by different names, but the use of violence and fear as an instrument to promote a political, social, or religious agenda, has long established its place throughout history.

The term ‘terrorism’ as it is commonly used today, however, has its foundations in the latter part of the French Revolution when the First French Republic was established. At that time, Maximilien Robespierre - then leading the Committee on Public Safety - carried out the ‘reign of terror’ (*regime de la terreur* or *La Terreur*)¹⁷ from September 5, 1793 to July 27, 1794 as a state instrument used to protect the new French government from subversives. In order to quell the threats of civil war and counter- revolution during that period, terrorism was framed as a positive, value-laden, and necessary act by the state as it supposedly aimed to preserve justice and protect democracy at a time when the new French Republic was at its infancy.

Leaders of the First French Republic sought to normalize terror as a tool to protect the state. One member of the National Convention at that time, Bertrand Barère de Vieuzac, even advocated for making terror “the order of the day” (Shusterman 2015: 175-203).¹⁸ Robespierre believed in the necessity of terror in eliminating opponents of the revolution, stating:

“If the basis of popular government in peacetime is virtue, the basis of popular government during a revolution is both virtue and terror; virtue, without which

¹⁷ “Reign of Terror,” Encyclopedia Britannica. Updated December 18, 2017. Available at <https://www.britannica.com/event/Reign-of-Terror>. Accessed April 5, 2018.

terror is baneful; terror, without which virtue is powerless. Terror is nothing more than speedy, severe and inflexible justice; it is thus an emanation of virtue; it is less a principle in itself, than a consequence of the general principle of democracy, applied to the most pressing needs of the [homeland]..”(Linton 2006: 23)

This driving principle behind *regime de la terreur*, which permeated the actions and policies of the First Republic, allowed the state to justify the execution of about 40,000 people by guillotine (Linton 2006).

Not everyone in Europe saw this state policy as just or necessary. European philosophers such as Sir Edmund Burke of England criticized and demonized terrorism as an unjust tool of the state. It was through Burke’s *Letters on a Regicide Peace* when the term “terrorist” first entered the English language with a negative connotation, as part of his reaction to the violence of the French Revolution (Helland 2013). The critique focused on terror as a state instrument that was used without consent from the people in a supposed democracy. Burke viewed Robespierre’s policy as a form of government coercion, and a means of wielding illegitimate power (Helland 2013). Two decades later, Jeremy Bentham followed suit, also criticizing terrorism as a “perversion of the political process” as it allowed for the attainment of sovereign power through the use of fear (Helland 2013). It was through this philosophical discourse that the critical perception of terrorism was solidified, consequently contributing to the negative notion of terrorism that permeates the global discourse today.

Since the French Revolution, however, terrorism has evolved from politically motivated acts and assaults on leaders and states, to wanton violence on civilians. From a time when terrorism was used by the state as that institution with an assumed

legitimate monopoly of violence, we now see terrorism employed as a strategy by non-state actors against the state, or in opposition to other political or social institutions of power.

In the aftermath of the events of 9/11 - and the use of violence as a strategy to pursue a higher ideological or political purpose (particularly by jihadists) - it has been suggested that the goals of contemporary terrorists are no longer limited to “overthrowing a government or gaining independence.” Engaging in political violence has steadily become a function of ideological warfare. In specific reference to militant Islam, Karns and Mingst have argued that the goals of terrorism now “include eliminating Western, and especially American, presence in Islamic holy lands” (2010: 345).

The intricate nature of terrorism as an act of violence has no doubt framed and shaped the nebulous nature of terrorism as a political concept. It is this conceptual complexity that has stymied the United Nations for decades in its attempt to formulate and implement counter-terrorism agreements founded on a universal definition of the threat. A deeper understanding of this lack of unanimity thus calls for an intentional look into the paths of development, as well as the evolutionary process, of the definition of terrorism and its entire discourse within the premiere global organization of states.

The Terrorism Discourse in Global Policy Making

The Pre-UN Era

Since its inception in 1945, the United Nations (UN) has been involved in efforts to address terrorism, seeking to find ways to eliminate it, prevent it, and/or punish

those who engage in terrorist acts. It is important to note however, that concerns about political violence against a state - with the use of acts of terror as a strategy or tactic - have in fact predated the establishment of this global organization.

Since the early 1900s, there have been numerous unsuccessful attempts by the global community to formally define terrorism as a criminal offense under international law. It was only in the 1920s to 1930s however that efforts to systematically state the exact nature of the phenomenon gained significant traction (Saul 2005: 58). This interest in defining acts of terror, and in preventing and punishing such acts, coincided with the establishment of the League of Nations (the predecessor of the United Nations). The League was established in 1920 as a result of Paris Peace Conference to ensure collective security and continued peace after World War I.

The first formal proposal for an international agreement on terrorism was made by Romania at the League of Nations in 1926. Romania had requested the League to consider drafting a 'convention to render terrorism universally punishable' but the petition immediately fell flat.¹⁹ It was not until the early 1930s, during the series of International Conferences for the Unification of Criminal Law (ICUCL)²⁰ that terrorism was more seriously and methodically considered as part of global efforts to standardize criminal law. Its debut as a political concept considered within the context of international treaty law came at the Third ICUCL Conference in Brussels in 1930.

¹⁹ Cited in Saul (2005) from League of Nations (LoN), Committee of Experts for the Codification of International Criminal Law, Replies of Governments 1927, LoN Doc. C.196.M.70.1927.V, p. 221.

²⁰ These conferences were held in Brussels (1930), Paris (1931), Madrid (1933), and Copenhagen (1935). Bounthoul (1975) cited in Saul (2005: 59).

The inclusion of terrorism on the agenda was made in reference to acts of violence against people or property. The intention at that conference was to address and define criminal acts that had “the purpose of expressing or executing political or social ideas” and that were simultaneously capable of producing “common danger” to the public (Zlatic 1975). In discussing what crimes should be contemplated in relation to the “intentional use of instruments capable of producing public danger,” a number of Eastern European countries proposed that terrorism be subsumed under such offences (Segesser and Gessler 2009: 13) to wit:

‘The intentional use of means capable of producing a common danger that represents an act of terrorism on the part of anyone making use of crimes against life, liberty or physical integrity of persons or directed against private or state property with the purpose of expressing or executing political or social ideas will be punished.’²¹

Saul (2005) observed that such a definition framed terrorism as characterized by two major features: first, the political or social motives behind specified violent acts; and second, the risk of producing a common danger to the state or the public. Any reference of the use of terrorism by a State was absent.

The Fourth ICUCL Conference the following year saw two other proposed definitions of terrorism from two rapporteurs. Despite variations in these proposals, the element of imposing a political or social doctrine through criminal violence remained at the core of terrorism as a concept (Saul 2005: 59). At the end of the Fourth Conference, however, participating States adopted a resolution with a definition of terrorism that had no reference whatsoever to the political or social causes of such

²¹ Final Commission Proposal, quoted in Zlatic (1975), op. cit. n. 7, at p. 479; also cited in Saul (2005).

violence, but instead one that focused on the *effects* of certain violent acts (Saul 2005: 59). The conference concluded with a recommendation that States should cooperate towards “universal repression” of terrorist acts. The reference to terrorism in the resolution reads as follows:

‘Whoever, for the purpose of terrorizing the population, uses against persons or property bombs, mines, incendiary or explosive devices or products, firearms or other deadly or deleterious devices, or who provokes or attempts to provoke, spreads or attempts to spread an epidemic, a contagious disease or other disaster, or who interrupts or attempts to interrupt a public service or public utility will be punished ...’²²

What is compelling about this resolution is that the term ‘terrorism’ *per se* was not universally defined despite lengthy discussions that illustrated a common understanding of the political nature of the phenomenon during the conference debates; and just as it is occurs today, reference to terrorism at that time devolved into references to “acts of terror,” or *crimes* that seek to “terrorize” the state or the public. This suggests that states in the international system have consistently been prudent when it comes to associating terrorism with politics or attributing an inherently political motive to the phenomenon; for what is political (rather than merely criminal) straddles subjectivity and each state’s exercise of sovereignty.²³

²² Definitions quoted in Zlataric (1975), op. cit. n. 7, at pp. 479-480. 11. Ibid., at p. 480.

²³ It is also worth noting that the focus of this definition on physical violence predates, and therefore leaves out, consideration of other forms of terrorism that may occur today, the most prominent of which are cyberattacks. Now increasingly common in the arsenal of terrorists, whether transnational individuals, cadres of individuals, or states themselves, cyberattacks are changing the face of terrorism and may require another layer to considering/reconsidering what terrorism means politically and legally. Currently, while cyberterrorism is not specifically mentioned in the proposed convention nor is it a subject of a proposed treaty or legal regime, the UN - through the Counter-Terrorism Implementation Task Force - has begun efforts to understand how states can address the burgeoning issue.

In seeking to define or characterize terrorism, States heavily debated on the merits of categorizing terrorism as a political offense or a criminal offense, with most countries leaning towards characterizing terrorism as an international criminal act. This illustrates the reluctance of states at that time to give up their national legal traditions and jurisdictions to conform to a new internationalist or universalist vision of criminal law (Lewis 2014: 137). But more significantly, the question of what terrorism is and how it should or can be prosecuted was complex - and controversial - when we delve into the political climate and historical context of that period.

The early 1900s saw fascist and authoritarian regimes in Europe such as Italy and Germany suppressing opposition and criminalizing political violence, while liberal (or democratically-oriented) states such as Britain fighting for political freedom and recognizing that acts of violence against the state might be legitimate. The world witnessed the emergence of ultra-nationalist and separatist movements against the oppressions of Fascism or Nazism, where violence became a tactic of resistance. In this light, countries like Britain were concerned that categorizing and prosecuting (legitimate) political violence as terrorism would stifle free speech or freedom of association in opposition groups, or crush a state's right to offer political asylum (Lewis 2014: 136). In the same vein, doing so would also fail to recognize terrorism as a tool employed by a repressive state.

These fundamental differences in viewing terrorism as illegitimate political violence versus terrorism as legitimate freedom fighting were at the very core of the early debates on the concept. This dichotomy between illegitimate and legitimate political violence, and how such polarity of interpretation shapes the path towards

finding a universal definition of terrorism, continues to trouble the current terrorism discourse almost a century after.

As a consequence, from the very nascent stages of the terrorism discourse, the discussions - and subsequent agreements resulting from those discussions - have instead relied on the practical and more tangible aspects of terrorism to characterize it: The particular acts of violence themselves that cause fear in persons, as well as damage to life and property. By focusing on criminal acts rather than on the motives, the international community would theoretically still be able to standardize criminal law and prosecute specified criminal acts of terror by virtue of their detrimental effects on persons - and ultimately maintain international peace and order - without being deterred by the sensitive politics (or political motives) attached to such acts.

As the series of International Conferences for the Unification of Criminal Law (ICUCL) progressed, there was thus more focus on “social” terrorism and decreased reference to “political” terrorism. At the Fifth Conference in 1934, the adopted resolution provided for the punishment of any person who engages in “any means whatsoever to terrorize the population” with the intention of “undermining social order” cementing terrorism - or at least terrorist acts - as a depoliticized crime, having only a social element (Zlataric 1975: 480). Terrorism as a concept remained nebulous and narrow as to its motives and fundamental nature, while the list of acts that fell under it as a general social crime expanded to include any act that terrorized a population (such as, but not limited to, provoking an international catastrophe, destroying art works, and participating in massacres or collective atrocities against civilians). These acts of terror were viewed as *crimina juris gentium* or punishable crimes under

international law (Saul 2005: 60). As Saul notes, in becoming silent about political terrorism and disregarding earlier references to political aims of those who employed terrorism, the Fifth Conference consequently “reduced the notion of terrorism to the crime of anarchy” (2005:60).

At the Sixth Conference in Copenhagen in 1935, States then adopted a draft model for national legislation to repress terrorism that listed specific acts punishable as acts of terror.²⁴ The model defined such acts to be “intentional acts directed against the life, physical integrity, health or freedom’ of specified protected persons, where the perpetrator has created ‘a common [or public] danger, or state terror that might incite a change or raise an obstacle to the functioning of public bodies or a disturbance in international relations.’ What is fascinatingly distinct about this draft however, is that it aimed to codify terrorism as a “discrete crime” (Saul 2014: 60) rather than a general or ordinary crime under international law:

“It is necessary that certain acts should be punished as *special offences*, apart from any general criminal character which they may have under the laws of the State, *whenever such acts create a public danger or a state of terror*, of a nature to cause a change in or impediment to the operation of the public authorities or to disturb international relations, more particularly by endangering peace ...’ [emphasis mine].

This seemingly innocent shift in the Copenhagen conference illustrates the push and pull between the divergent views on terrorism, with states this time apparently recognizing the dual nature of terrorism as political and social (Ditrych 2014). That said, terrorism fundamentally remained depoliticized. The thought that it could be

²⁴ League of Nations Committee for the International Repression of Terrorism (CIRT), “Texts adopted by the 6th International Conference for the Unification of Criminal Law” (Copenhagen, 31 Aug-3 Sept 1935), Geneva, 7 January 1936, LoN Doc. CRT.17 (‘Copenhagen Draft’).

exercised by a state was “discursively impossible²⁵”; that is, the ways in which terrorism is read, understood, described and even prosecuted obscures the existence of the state as a perpetrator of terrorist acts. Identifying and perceiving states as something other than victims of terrorism becomes unimaginable and invisible in the discourse.

Ditrych (2014)²⁶ notes that the driving force in denying the political motive of a terrorist act was “the perceived need to remove terrorism from the category of crimes for which a certain protection, namely with respect to possible extradition, existed.” This depoliticization in the formal discourse did not mean that the political nature of terrorism was not discussed in marginal discourses (i.e. outside the international criminal law debates), only that keeping such tropes present in formal discussions could become roadblocks to progress so much so that silence about it became the compromise.

Ultimately, terrorism was effectively limited to practices intended to “terrorize a population” (Ditrych 2014: 124;127, citing Doc A/34/37). At the end of the day, the common view at this juncture in the development of the discourse was clear (at least on paper): “Terrorists always corrupted the political; their crimes, however, never were

²⁵ I borrow the term for Laura Sjoberg’s (2016) work on women as wartime rapists. In that study, Sjoberg used the term to describe how sexual violence is read, understood, described and even prosecuted to obscure the existence of perpetrators and victims who fall outside the sex-stereotypical assumptions of who victims and perpetrators of such crimes are. Hence, women as rapists or perpetrators of sexual violence are “discursively impossible” because they contradict gendered assumptions of who can commit wartime violence and are therefore invisible in the academic and legal literature.

²⁶ Citing Doc. A/AC/160/1 (1973), an observation by the United States.

political.” (Ditrych 2014: 124)²⁷ This kept the state simultaneously immune from the commission of terrorist acts, and free to defend such acts within the context of impermeable sovereignty.

While the ICUCL featured debates on the nature and definition of terrorism, these discussions were only a prelude to more focused negotiations on the issue, given that terrorism was only one of the many crimes being discussed in that conference series. It was not until the assassination of King Alexander I of Yugoslavia by Croatian and Macedonian separatists in 1934, that the “most significant early modern attempt to define terrorism as an international crime” (Saul 2014: 61) was undertaken by the League of Nations from 1934 and 1937.

Since the French Foreign Minister was also killed together with King Alexander, the French government took the lead on efforts to deal with the terrorist act and turned to the League to propose the draft Convention for the Prevention and Punishment of Terrorism (CPPT). The impetus for the proposal was the fact that France had requested Italy to extradite the assassin who had then fled to the latter country, but was denied pursuant to their 1870 extradition treaty excluding political crimes from extradition. Without any recourse to international law - especially given the debates on what constitutes terrorism as a criminal or political offence - the League of Nations was pressured into placing the proposal on the agenda. Two months after France drafted the proposal, the League stated that the policies in place to repress terrorism at that

²⁷ Doc. A/PV.2037 (1972), Minutes of the General Assembly; A/PV.2045 (1972).

time were indeed not “sufficiently precise” to “guarantee international cooperation” on the matter.²⁸

On November 16, 1937, the draft convention was finally adopted, but only by 24 out of 60²⁹ Member-States during the Conference for the Repression of Terrorism in Geneva. The draft convention *encouraged* States to exclude acts of terror from the political offence exception to extradition in bilateral treaties.

While the CPPT did not explicitly define terrorism *per se*, it clearly defined *acts* of terrorism as "criminal acts directed *against a State* and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public" (Article 1, CPPT; emphasis mine). It further specified what kinds of anti-State actions were to be considered acts of terror. The list of such acts included willfully causing death or grievous bodily harm to heads of state, public officials, and/or their family members; willful destruction or damage to public property or facilities with a public function; and any act intended to harm the public (Article 2, CPPT). Any attempt to commit such acts or engagement in the manufacture, possession, or supply of ammunition to commit such acts were also considered acts of terrorism.

Fundamentally, terrorism was defined in the CPPT by three elements: the intended aim (i.e., a state of terror), the ultimate target (a State), and the prohibited means used (Saul 2014: 64). Proposals to refer to political or coercive motives, or to

²⁸ LoN (CIRT), Geneva, 10 April 1935, LoN Doc. CRT 1. cited in Saul (2014: 61).

²⁹ Twelve were European states, seven were Caribbean, Central or South American states, and five others included major states from other regions. The Convention was only ratified by one (colonial) state – India – and never entered into force (Saul 2014).

define terrorism as a means to a political end were shot down (Saul 2014: 64, citing Givenovitch 1935).³⁰

One salient provision in the CPPT - a provision that can arguably be seen as one of the early formal contributions to the present notion that terrorism is borderless and transnational in nature - is that which required signatory states to pass laws making such acts extraditable offences, in the event that one of their nationals commit such acts in another territory. This provision, however, was the downfall of the agreement. With states protective of their sovereignty (and their right to define what is legitimate political behavior), the 'exception to extradition' clause led to the derailment of the convention, preventing ratification, and resulting in the agreement never coming into effect. With the onset of World War II, interest in repressing terrorism waned and the convention was subsequently not revived when the United Nations was founded.

While the CPPT never came into fruition, it was the first formal basis for subsequent discussions on terrorism within the United Nations. It highlighted two principles of international law in relation to terrorism, which are first, that every State has the duty to refrain from encouraging terrorist behavior directed against another State and has the duty to prevent such acts; and second, that terrorism necessarily refers to acts "intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public." (CPPT text) The inclusion of effects on civilians as a categorical characteristic of international terrorism is arguably the crux of current disputes regarding terrorism as something that can be

³⁰ LoN CIRT, 'Legislation regarding political terrorist crimes: Study by T. Givenovitch', Geneva, 3 May 1935, LoN Doc. CRT.9, p. 4.

committed by a member-state against another state, or a member-state against its people. References to these principles in that early draft are still made today (Ruperez 2015), and the current discourse at the UN continues to echo to strands of thought that found their way into the CPPT decades ago.

The Terrorism Discourse in the United Nations

As mentioned in Chapter 3, the analysis of this study focuses on the development of the terrorism discourse in relation to the more recent definitional debate as it gained traction with the establishment of the UN Ad Hoc Committee on Terrorism in 1996. It is important to note however, that since the UN's founding in 1945, preventing and suppressing terrorist acts was already prominently on the radar of the UN General Assembly (GA). Tracing the development of the discourse as it moved from the halls of the General Assembly to the Security Council and to specialized bodies is crucial to understanding the processes by which the discourse developed and the power relations involved in shaping the discourse as we have it today.

Javier Ruperez, UN Assistant Secretary General and Executive Director of the Security Council Counter-Terrorism Committee from 2004-2007, noted that the levels of awareness of terrorism at the UN “has depended on the experience of the international community as a whole at any given time” (Ruperez 2006:1). This suggests that while terrorism has been on the radar of security issues at the UN since its inception, the discourse has seen distinct phases of development depending on the types and intensity of terrorist occurrences over the years. For our present purposes,

using the model of Javier Ruperez (2005) as a guide on distinct periods in the policy-making trajectory on terrorism/counterterrorism, I posit that there are four phases of the development of the discourse on terrorism at the United Nations: 1) The “Primary Phase” from 1945-1971; 2) The “Secondary Phase” from 1972-1992; 3) The “Pre-9/11 Phase” from 1993 to 2001; and 4) The “Post 9/11 Phase” from 2001 up to the present day.

In distinguishing these phases, it will be helpful to keep in mind that the organizational framework of the UN, particularly the structural dichotomy between the General Assembly (GA) and the Security Council (SC), has had a significant impact on the development of the global terrorism discourse (Saul 2005b, 141)³¹. As the main agenda-setting and deliberative body of the UN where each state gets an equal vote, the GA was the natural - and primary - forum within which the terrorism discourse developed. States have made an (unspoken) distinction between the GA as the body that deals with “soft power” issues (e.g., poverty alleviation and development, health, environmental protection, etc.) and the SC that addresses “hard power” issues such as peace and order, and (military) conflict resolution (Koskeniemi 1995: 325, 336; Saul 2005b: 141). Since early debates of terrorism fell under the auspices of international

³¹ The United Nations Charter established six principal organs of the institution: The General Assembly (GA), the Security Council (SC), the Economic and Social Council (ECOSOC), the Trusteeship Council, the International Court of Justice (ICJ), and the Secretariat. The two major bodies are the General Assembly and the Security Council. The GA is considered primary body as it is the forum through which all member-states can diplomatically engage with their counterparts to discuss important global issues and make recommendations for peaceful dispute resolution. Despite each Member-State having one vote in resolutions, the GA’s decisions remain non-binding; because of this, the Security Council has been touted as the authoritative body of the UN, as all Member-States are obligated to comply with Council decisions even if there are only five permanent members (and ten rotating members) that can vote on resolutions.

crime that was either socially or politically motivated, terrorism was placed on the GA's agenda. It was not until the late 1990s and into the 2000s - particularly after the events of September 11, 2001 - that terrorism was discursively and practically moved into the halls of the Security Council and treated as a more significant threat to international peace and security.

Through these changes, one thing has remained: the lack of consensus on a universal and legally binding definition of the phenomenon. Tracing the milestones of the discourse through the four phases I have identified might aid in our present efforts to understand why.

The Primary Phase of Discourse Development (1945-1972)

When the concept of terrorism entered formal UN discussions on how international law might be codified to ensure global peace after the Second World War, the concept took a remarkable turn. Unlike the depoliticized framing of terrorism in the League, terrorism at this stage did not refer to offences committed by non-state actors against the state or against civilians. Rather, terrorism was explicitly linked to the concept of organized aggression by "authorities of the State" in another country, establishing individual criminal responsibility for such authorities who carry out these acts of aggression (Saul 2005a: 66, 68).

In the 1954 Draft Code of Offences against the Peace and Security of Mankind (Part I) taken up by the UN's International Law Commission,³² terrorism was categorized as an offense "against the peace and security of mankind" that involved

"...undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State." (Article 2(6), emphasis mine)

This reference to terrorism as only committed by States *and* as acts committed in an organized manner (by political parties, for instance) deviated from an initial draft³³ in 1950 that covered terrorist acts committed by private persons or non-state actors. In examining the records of the debates, Saul (2005a: 66) notes that proposals to delete "organized activities" or to include private or non-state terrorism "with international effects" in what might be criminalized were rejected.³⁴

In deliberations on the 1954 draft, the absence of a definition of 'terrorist acts' or 'terrorist activities' was broached by the United Kingdom with the fear that such ambiguity would allow "states of bad faith" to "attack the acts and policies of

³² The International Law Commission (ILC) was established by the General Assembly in 1947. Under Article 13 (1) (a) of the Charter of the United Nations, the ILC was founded to undertake the mandate of the Assembly to "initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification." (ILC website). Available at <http://legal.un.org/ilc/ilcintro.shtml>. Accessed January 10, 2018.

³³ The 1950 Draft Code, crime no. IV, in Report by Special Rapporteur Spiropoulos, 26 April 1950, UN Doc. A/CN.4/25, ILC Yearbook (1950-II) p. 253 at p. 263; see also ILC Yearbook (1950-I) pp. 127-128 (Rapporteur Spiropoulos), cited in Saul 2005.

³⁴ As cited in Saul 2005, from the ILC Yearbook (1950-I) p.126 (Rapporteur Spiropoulos), p.166 (Cordova); ILC Yearbook (1951-II) p. 58, p. 127 (François). pp. 129, 166 (ILC Chairperson). p. 129 (Amado).

neighboring States.”³⁵ Nevertheless, the Special Rapporteur and other ILC members noted that terrorism already had a fairly precise definition in international law based on the 1937 draft Convention of the League of Nations. The draft also borrowed from other conceptualizations of terrorism that existed in extant legal instruments and principles at that time (such as those from the UN War Crimes Commission, Australian War Crimes Act, and Chinese Criminal Law). Ultimately, the ILC voted on the draft with an understanding of terrorism and particular terrorist acts pursuant to the 1937 League Convention.

The ILC adopted the article on terrorism virtually unanimously with a vote of 10-0 and three abstentions (Saul 2005: 68). Nevertheless, the General Assembly postponed taking up the draft and did not adopt it immediately on the grounds that “aggression” was not clearly defined, and that such a definition was necessary.³⁶ In 1974, twenty years after the ILC vote, the General Assembly adopted a resolution defining aggression that did not link the concept to terrorism.³⁷ This silence on terrorism as an act that is considered an act of state aggression once again redirected the discourse on terrorism - and the subsequent understanding of the phenomenon - towards one that again treated terrorism as international political violence by non-state actors against a state.

³⁵ ILC Yearbook 1954-II, p. 117.

³⁶ UNGA Res. 897 (IX) (1954). Also cited in Saul 2005: 68.

³⁷ UNGA Res. 3314 (XXIX) (1974).

The next two decades would see the UN delving on codifying specific acts of terror by non-State groups. Concerns about crimes on board an aircraft and the question of legal jurisdiction to prosecute such crimes led states to take on the issue of aircraft safety and the legal status of an aircraft in 1950 (Boyle and Pulsifer 1964: 307). The efforts of the International Civil Aviation Organization to address what was then a growing concern about the international nature of crimes committed on aircraft resulted in the adoption of what is now considered as the first international treaty against terrorism: The Convention on Offences and Certain Other Acts Committed on Board Aircraft enacted in Tokyo in 1963, and fully adopted in 1969 (O'Donnell 2006:853; Boyle and Pulsifer 1963). Shortly after, two other conventions addressing seizure of aircrafts (hijackings) and general civil aviation safety were adopted in 1970 and 1971 respectively.

While these first three legal instruments heralded increasing concern for terrorism, the scope of these conventions was very narrow. It was not until the Lod airport attack in Tel Aviv followed by the abduction and murder of 11 Israeli athletes during the Olympic Games at Munich in 1972, that terrorism became the focal agenda point at the GA. Then Secretary-General Kurt Waldheim requested the GA to make terrorism front and center of the next session, and discuss “measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms” (A/8791 of 8 September 1972). Member-States debated on whether to focus on cooperating to prevent terrorism, or formulating measures to eliminate the root causes of the phenomenon altogether (Ruperez 2005: 15). The latter proved to be controversial because of the disagreements over the nature

of terrorism itself. This consequently led to discussions on the UN's role in encouraging cooperative measures to prevent manifestations (rather than causes) of any terrorist threat.

The path was thus paved for the formulation of legal instruments geared towards preventing terrorist acts. The lack of a robust consensus on a definition of the concept under international law however, resulted in *ad hoc* conventions to suppress and prosecute specific criminal offences considered “terrorist activities.” Harking back to the spirit of the pre-UN terrorism discourse, which focused on practices intended to terrorize a population, these treaties provide for the punishment of specific acts of terror under international law without ever referring to a universal definition of terrorism itself.

Today, there are 19³⁸ such international legal instruments adopted by various UN member states that address the prevention and suppression of terrorism.

³⁸ The 19 legal instruments (conventions and supplements) are:

- 1) The Convention on Offences and Certain Other Acts Committed On Board Aircraft (1963);
- 2) The Convention for the Suppression of the Unlawful Seizure of Aircraft (1970);
- 3) The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
- 4) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973);
- 5) The Convention against the Taking of Hostages (1979);
- 6) The Convention on the Physical Protection of Nuclear Material (1980);
- 7) The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988);
- 8) The Protocol for the Suppression of Unlawful acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988);
- 9) The Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988);
- 10) The Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991);
- 11) The International Convention for the Suppression of Terrorist Bombings (1997);

Collectively, these treaties identify and define nearly fifty offenses including crimes against civil aviation, crimes against shipping or continental platforms, crimes against persons or property, crimes against the use, possession, or threatened use of bombs or nuclear materials, and the financing of terrorism (O'Donnell 2006: 855). The approach that the UN has taken has indeed been to focus on identifying, condemning, and suppressing terrorist acts as crimes under international law to aid in the immediate operational efforts to prevent and prosecute terrorism, rather than actively seeking a universal definition the concept. A 2004 Security Council Resolution (SC Res 1566) supports this manner of dealing with the terrorist threat, suggesting that the crimes under all the aforementioned treaties form part of a “code of terrorist offences” (O'Donnell 2006: 856) even absent a political cause. In that resolution, the Council states that it:

“[c]ondemns in the strongest terms *all acts of terrorism irrespective of their motivation*, whenever and by whomsoever committed, as one of the most serious threats to peace and security...” (S/RES/1566 (2004), p.2 para. 1,

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- 12) The Convention for the Suppression of Terrorist Financing (1999);
 - 13) The International Convention for the Suppression of Acts of Nuclear Terrorism (2005);
 - 14) Amendments to the Convention on the Physical Protection of Nuclear Material (2005);
 - 15) Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005);
 - 16) Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf (2005);
Adapts the changes to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation to the context of fixed platforms located on the continental shelf (2005)
 - 17) The Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (2010);
 - 18) Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (2010); and
 - 19) Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft (2014).

emphasis mine.)

It is important to note that while there is a broad consensus on the need for states to come together on counter-terrorism efforts - particularly by incorporating and criminalizing the terrorist offenses internationally identified in existing treaties into each state's national criminal laws - not all States have signed, ratified, or acceded to all of these legal instruments. Every convention has its set of reservations from different states, suggesting the very political and highly malleable nature of terrorism a concept and as a real security issue.

Secondary Phase of Discourse Development (1972-1996)

Frequent incidents of terrorism throughout the 1970s and 1980s prompted the United Nations to recognize the enduring and ubiquitous character of terrorism as a security threat. After the attacks at the 1972 Munich Olympics, the Sixth Committee of the GA - the primary forum for taking up general legal questions at the GA - was assigned to consider terrorism as a general problem under an agenda item titled "Measures to prevent international terrorism" (Ruperez 2005: 15).³⁹

³⁹ The GA considered the agenda item at its thirty-first session, biennially from its thirty-second to forty-eighth sessions and annually thereafter, changing its title from "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes" to "Measures to eliminate international terrorism" at its forty-sixth session. The relevant resolutions throughout that period are as follows: 31/102, 32/147, 34/145, 36/109, 38/130, 40/61, 42/159, 44/29, 46/51, 49/60, 50/53, 51/210, 52/164, 52/165, 53/108, 54/109, 54/110, 55/158, 56/88, 57/27, 58/81, 59/46, 59/290, 60/43, 61/40, 62/71, 63/129, 64/118, 65/34, 66/105, 67/99, 68/119, 69/127 and 70/120 and decision 48/411. (General Assembly, Sixth Committee (Legal) - 71st Session, Agenda Item 108.) Available at http://www.un.org/en/ga/sixth/71/int_terrorism.shtml.

The GA then decided to establish an Ad Hoc Committee on International Terrorism, consisting of 35 member-states appointed by the Secretary-General based on geographic representation (Res 3034 (XXVII)). This Ad Hoc Committee met in 1973 but was later obligated to suspend its work.

In September of that year, the US proposed a Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism to the General Assembly.⁴⁰ Interestingly, despite the reference to international terrorism in the title, the acts defined in this proposed treaty were not categorically referred to as ‘terrorist’ acts but rather as offences of ‘international significance’ (Saul 2005a: 69 citing Murphy, op. cit. n. 83, at p. 505.) The offenses in the draft included unlawful killing, causing serious bodily harm, or kidnapping as long as these acts had an “international dimension” (Saul 2005a: 69; Murphy, op. cit. n. 83, at p. 505) and were committed with the intention of “damaging interests of or obtaining concession from a State or an international organization.”⁴¹ This broad characterization of terrorism only contemplated international offences committed by non-state actors against a State, and more significantly acts committed *by* a foreign national or *against* a foreign national. Through this proposal, the US was hoping to discursively reconstruct terrorism as a crime with a fundamentally international or transnational nature, committed by foreign individuals against (enemy) States and their citizens. Any overt or

⁴⁰ UN Doc. A/C.6/L.850 (1972).

⁴¹ 1972 US Draft Convention, Art. 1(d).

direct reference to the existence of state terrorism in theory or in practice was made invisible in the proposal.

That said, a striking provision in the same draft stated that any offense committed against a military member in peacetime, as well as any prohibited act committed *by* a military member in peacetime may amount to terrorism. Saul (2005a: 70) posits that such a provision might be read as “admitting the punishment of ‘State terrorism’ (subject to state immunities).” To say that a military member - who is technically an agent of the state - can be made culpable for a terrorist act arguably acknowledges the possibility of state terrorism as well.

While the US draft significantly contributed to broadening the terrorism discourse, member-state support for the proposal was weak. The politics of the Cold War and the ideological divide between developed and developing States with regard to issues of self-determination stunted progress: China, along with Arab and African countries, interpreted the US draft to be an “attempt to criminalize self-determination movements” (Saul 2005a: 71, citing Murphy, op. cit. n. 89, at p. 17; Murphy, op. cit. n. 83, at p. 499) at a time when countries were seeking to untangle themselves from their colonial pasts. The discussions were also marred by heated exchanges between Arab and Israeli States in the context of the highly volatile political climate at the heels of the anti-Israeli Munich attacks. These conditions condemned the negotiations and ultimately led to the rejection of the treaty.

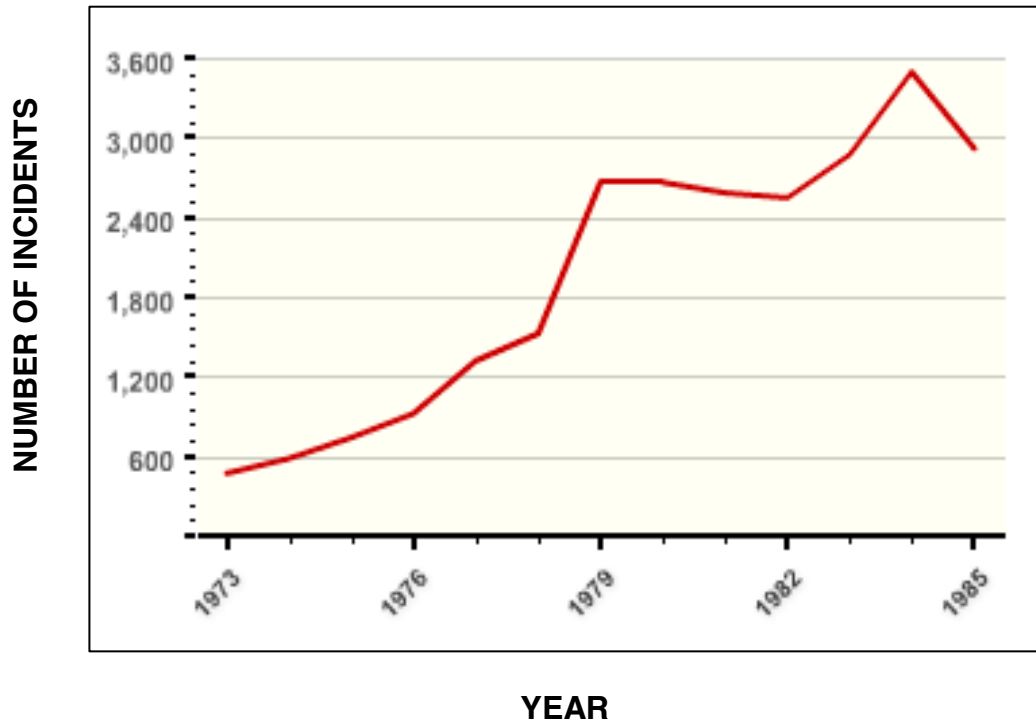
As the disagreements on the concept of international terrorism continued among UN Member-States, so did international terrorist attacks. Data from the Global

Terrorism Database⁴² show that incidents of terrorism steadily increased from 1970 into the mid-1980s, with over 25,000 incidents recorded⁴³ (see Fig.1). Despite the existence of flagrant, large-scale attacks such as the 1976 hijacking of an Air France flight to Entebbe, and the 1979 occupation of the US embassy in Tehran - the Security Council treated all these incidents as violent crimes under international law without categorical references to them as acts of 'terrorism.' Investigations of these incidents were left to national agencies, and the Security Council took no action on these attacks. The discussions in relation to terrorism remained within the agenda of the Sixth Committee of the General Assembly.

⁴² The Global Terrorism Database is an open-source database managed by the National Consortium for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland. The database includes information on terrorist events around the world from 1970 through 2016 (with additional annual updates planned for the future) culled from open media sources that are verified and deemed credible by START. The GTD includes systematic data on domestic as well as transnational and international terrorist incidents that have occurred during the said time period and now includes more than 170,000 cases. For each GTD incident, information is available on the date and location of the incident, the weapons used and nature of the target, the number of casualties, and--when identifiable--the group or individual responsible.

⁴³From the GTD, a broad search of worldwide terrorism incidents from 1970 to 1985 shows 25,294 separate incidents of terrorism. These include successful and unsuccessful incidents (with no injuries or fatalities, to those with more than 150 casualties).

Figure 1. Terrorism Incidents Over Time, Recoded from Open-Source Data, 1970-1985.



Source: National Consortium for the Study of Terrorism and Responses to Terrorism (START). (2016). Global Terrorism Database [Data file]. Generated and retrieved from <https://www.start.umd.edu/gtd>, 29 January 2018.

It was not until the first half the 1980s when terrorism reached unprecedented levels with an outbreak of bombings, aircraft hijackings, and hostage-taking incidents that the discourse on terrorism spilled over into forums outside the GA.⁴⁴ The spate of

⁴⁴ See Figure 1 for the trend in incidents during this period. The incidents included – but are not limited to - the 1983 bombing of Gulf Air flight from Karachi, Pakistan to Abu Dhabi, UAE; the 1984 hijacking of a Kuwait Airways flight from Bangkok to Kuwait; a series of incidents in June 1985 (a TWA flight from Athens to Rome; a Royal Jordanian aircraft sitting on the tarmac at Beirut International Airport); the seizure of 25 Finnish UN soldiers by the South Lebanon Army in June 1985 and the seizure of the cruise ship Achille Lauro later that year (Saul 2005b: 144, footnote 25).

attacks prompted the Security Council to finally - and unanimously - adopt its first resolution (SC Res 679 of 1985) to ever use the word “terrorism” in reference to such acts. SC Res 679, which came in December 1985 at the heels of a statement of the SC President⁴⁵ “condemning all acts of terrorism including hostage-taking and abduction” as “manifestations of international terrorism.”⁴⁶ Coincidentally, the resolution was adopted on a day when Palestinian suicide bombers attacked US and Israeli check-in desks at the Rome and Vienna airports, killing 20 civilians (Saul 2005b: 144).

The context by which the SC Res 679 was adopted is critical to analyzing the development of the terrorism discourse at this point, particularly in terms of how the concept entered the UN’s discursive arena, as well as to how its meaning shifted from a “soft power” agenda point in the General Assembly to a “hard power” concern in the Security Council. The Council did not simply or naturally come to a moral epiphany about the massive security threat that terrorism posed to human rights and diplomatic relations. Rather, I argue that recognizing terrorism as a grave security threat at that point in history was largely - if not solely - a function of the powers that be. That is, when the United States - the country with the most political clout in the UN at that time, and a permanent member of the Council - recognized terrorism as a threat to its national (and foreign interests), the trajectory of the discourse was altered. This is

⁴⁵ The SC Presidents are determined by rotation. The statement dated 9 October 1985 was given by the United States as Security Council President for the month of October, as represented by Herbert S. Okun and Vernon A. Walters. The statement was made in response to the hijacking of the Italian ship *Achille Lauro*.

⁴⁶ SC REs 579 (1985), paras 1 and 5; see also SC Pres Stat (9 October 1985); also cited in Saul 2005b: 144.

because SC Res 679 was formulated and adopted in response to a letter from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council requesting that the Council urgently meet to “consider the serious situation created by acts of hostage-taking and abduction.”⁴⁷ The formal letter presented by the United States signaled to the international community that terrorism should be considered a grave enough offense under international law to merit attention from the Council. The unanimous condemnation of these incidents as terrorism arguably clouded this fact: The spate of terrorist attacks directly and indirectly affected the United States both with its citizens and its political allies - particularly Israel - as victims. With the US holding the strongest voice in the UN - one that could shape, direct, and reconstruct the agenda and the ensuing political and social discourse within the international arena, I posit it was not primarily the prevalent sense of urgency that led to the elevation of terrorism in the broader global security discourse, but rather the capability (and legitimacy) of the US to thrust it into that direction.

The inclusion of terrorism on the Security Council’s agenda did not mean that the General Assembly remained silent on terrorism following the failed 1972 draft convention. From 1972 to the time that the SC adopted its first resolution on terrorism, the GA adopted eight separate resolutions on the issue, repeatedly focusing on “Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms” and encouraging Member-States to

⁴⁷ Dated 16 December 1985.

examine “the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes.”⁴⁸ In 1976, it once again invited the Ad Hoc Committee on Terrorism to continue its work (A/RES/31/102).

Unlike the tone of the resolution in the SC, the GA resolutions often and openly acknowledged that States may be just as capable of committing terrorist acts as non-state actors. A 1985 GA resolution, for instance, condemned State terrorism and called for Member-States to recognize the “[i]nadmissibility of the policy of State terrorism and any actions by States aimed at undermining the socio-political system in other sovereign States (A/RES/39/159)⁴⁹. This particular resolution once again brought the question of terrorism as perpetrated by the State into the discourse, not only acknowledging that State terrorism was “being practiced ever more frequently” at that time, but also condemning its practice by “categorically rejecting all concepts, doctrines, or ideologies to justify actions of States aimed at undermining the socio-political system of other States” (p.99).

In the same period, the GA also took up the definitional issues on terrorism in the context of differentiating it from the struggle of people’s national liberation.

Through a 1987 resolution, the GA brought to the fore debates about when political

⁴⁸ These resolutions are as follows: Resolution 3034 (XXVII) of 18 December 1972; 31/102 of 15 December 1976; 32/147 of 16 December 1977; 34/145 of 17 December 1979; 36/109 of 10 December 1981; 38/130 of 19 December 1983; 40/61 of 9 December 1985; and 42/159 of 7 December 1987.

⁴⁹ 23 January 1985.

violence or the use of force can be considered legitimate or illegitimate, with the latter falling within the definition of terrorism. The said resolution recognized that establishing a generally agreed definition of international terrorism could enhance the “struggle against terrorism” (para. 17). In indirectly making a distinction between political activism in relation to seeking independence and political violence with the aim of causing fear or harm, the GA reaffirmed the right to self-determination of peoples, as well as the need to uphold human rights of individuals in the face of preventing international terrorism as commonly understood. In this context, the resolution called for the prevention not only of international terrorism by extremist groups or individuals, but also terrorism by States, to wit:

“The General Assembly...

4. Calls upon all States to fulfil their obligations under international law to ***refrain from organizing, instigating, assisting or participating in terrorist acts in other States, or acquiescing in activities within their territory*** directed towards the commission of such acts;

5. Urges all States to fulfil their obligations under international law and to take effective and resolute measures for the speedy and final elimination of international terrorism and, to that end:

(a) To ***prevent the preparation and organization in their Respective territories, for commission within or outside their territories, of terrorist acts and subversive acts directed against other States and their citizens...***” (A/RES/42/159, emphasis mine).

The resolution did nothing to settle the ideological, much less definitional, debate on the nature of terrorism; rather it even highlighted the nebulous state of affairs with regard to the concept of international terrorism, particularly in terms of who can commit such an act. Moving forward then, the United Nations operationally

focused on *acts* of terrorism in calling on states to prevent and/or prosecute these crimes under national law following international law principles.

It can be said that the GA more actively had terrorism on its agenda compared to the SC, with the former delivering more resolutions than the latter. In 1989, three years after the initial recognition of terrorism as an issue within the Security Council's domain, another milestone resolution was passed by the SC. A UN military observer in Lebanon was abducted that year. The SC strongly condemned this action and demanded his release with a resolution (SC Res 638) that was unanimously adopted by the Council members. The same resolution framed hostage-takings and abductions as methods of terrorism and called Member-States to prosecute "*all* acts and abductions as manifestations of terrorism" (Saul 2005: 144, citing SC Res 638, emphasis mine). Saul (2005: 144-45) notes that this blanket classification of all hostage-takings and abductions as terrorism effectively removed from the meaning of terrorism any political motives, the intent to instill fear, or coercive aims of the perpetrators that had previously been identified as defining elements of the phenomenon.

Another terrorist attack using plastic explosives on a civilian airliner over the Sahara triggered an additional SC resolution that called Member-States to "prevent all acts of terrorism"⁵⁰ in relation to civil aviation. This signaled the acknowledgement that any attack on aircraft, including those committed by the use of plastic explosives, can and should be considered a practice of terrorism.

⁵⁰ SC Res 635 (1989), preamble.

All the incidents that had led up to the 1987 GA and 1989 SC resolutions on terrorism clearly shifted the UN's focus from coming to an agreement on the meaning of the phenomenon to instead identifying the methods of terrorism (such as hostage-taking, abductions, or attacks using plastic explosives) to characterize the threat. Thus, even if such acts were done without any direct harm to the State, the Council effectively suggested that they should be considered serious violations of international law as means by which terror was sown.

The following year, assassinations of State authorities were also discursively included within the ambit of terrorism when the Council President condemned the assassination of then newly elected Lebanese President Rene Moawad as a “cowardly, criminal, and terrorist act.”⁵¹ While some legal scholars posit that assassinations cannot be considered terrorism because fear is only instilled upon an individual (Guillame 2003,5; Rubin 1977: 121-22), others have opposed such an argument for the reason that assassinations are still likely to horrify other politicians, terrify their supporters, and threaten the safety of the public at large (Saul 2005: 145; Snitch 1982;). In the latter sense, political assassinations can be considered acts of terror by virtue of the fear impressed on potential indirect victims.

The discourse on terrorism and its definition as observed in subsequent SC resolutions into the early 1990s continued to center on condemning violent criminal acts without referring to the potential reasons for such attacks. Saul (2005:146) notes that the definition of terrorism at this point was not based on political motives but

⁵¹ SC Pres Stat (22 November 1989) S/20988, also cited in Saul 2005:145.

rather on “prohibited means” - suggesting that the UN recognized the immediate need to address the manifestations of terrorism as a security threat instead of resolving the debate on its conceptual essence. It appears that the underlying notion that we “know terrorism when we see it” prevailed as the underlying, albeit unspoken, discursive rule in dealing with the threat on the ground.

With acts of terrorism identified and codified in international law, the UN found a steady means by which to practically and operationally address acts of terror in the field. Consequently, however, it found itself having to address issues of prosecution particularly in the context of international human rights principles. This turn marked the transition into the third phase of terrorism’s discursive development in the UN.

Tertiary Phase of Discourse Development (1993-2001): The Pre-9/11 Period

The conceptual and operational relationship between terrorism and human rights first entered the UN discourse towards the end of 1993, when the General Assembly passed a resolution on human rights and terrorism. The resolution was based on the notion that terrorist acts constitute gross violations of human rights, particularly against the “most essential and basic human right” to life. Hence, all Member States were called to fulfill their “obligation to promote and protect human rights and fundamental freedoms” (A/RES/48/122) pursuant to the Universal Declaration of Human Rights, in their counter-terrorism efforts.

This resolution - and the subsequent discourse that ensued - reflected a broader agreement among Member-States that terrorist acts could never be justified

based on any cause, whether it be political, social, economic, religious, racial or ethnic (Ruperez 2005: 15). It paved the way for the third phase of the development of the terrorism discourse that transcended its conceptualization in terms of motivations. Considering that there was a common agreement on the atrocity of terrorist acts per se (that had already been identified through treaties), it made more operational sense at this point in time to not only condemn terrorist acts as human rights violations regardless of motivation, but more significantly to allow for the prosecution of such acts under international human rights laws. In light of this development, the resolution urged Member-States to increase cooperation on counter-terrorism both at the national and global levels, and provided for the inclusion of terrorism as an issue within the human rights agenda of the General Assembly.

In December 1994, a Declaration on Measures to Eliminate International Terrorism was adopted by the GA. This resolution marked a shift in tone from simply identifying or categorizing terrorist acts, to engaging in national and global efforts that will “eliminate terrorism in all its forms and manifestations” (A/RES/49/60). While it did not explicitly define terrorism, it subtly included a characterization of the phenomenon by noting that “[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.” The statement suggested that terrorism was necessarily a criminal act that first, aimed to sow fear among the public, and second, was done for political purposes. In effect, the GA agreed on the unjustifiable criminal nature of

terrorism as a political act that violated human rights “wherever and by whomever committed,” including when such acts “jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States” (A/RES/49/60).

The said resolution was also important beyond the human rights context in that it acknowledged the possibility of State terrorism alongside terrorism committed by extremist groups, as revealed by this paragraph:

“States, guided by the purposes and principles of the Charter of the United Nations and other relevant rules of international law, ***must refrain from organizing, instigating, assisting or participating in terrorist acts in territories of other States***, or from acquiescing in or encouraging activities within their territories directed towards the commission of such acts.” (emphasis mine; A/RES/49/60)

This provision arguably set the stage for the current definitional debate on terrorism, wherein arguments for including State terrorism in the conceptualization of international terrorism have created rifts between and among countries vis-a-vis their political interests.

At the heels of Resolution 49/60, the Member-States recognized the need to further expand international law on transnational terrorism given the growing prevalence of terrorist incidents at that time. The GA voted to establish an Ad Hoc Committee to support the Sixth Committee of the GA in elaborating an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism that would supplement the existing treaties against terrorism. In resolution 51/210 of 1996, the GA called on States to work on developing a comprehensive legal framework for a

convention that clearly defines and addresses international terrorism. It was then that the proposed UN Comprehensive Convention on International Terrorism (UNCCIT) was born. However, at the time Resolution 51/210 was approved, the UN had failed to clearly develop a universal and legally binding definition of terrorism despite the ten existing conventions on terrorist acts at that time.

Regional treaties⁵² on the phenomenon had generic definitions (O'Donnell 2006: 872) but these remained trapped in the discursive and practical complexities brought about by the conceptual intersections between extremist violence, political violence, self-determination, and international criminal law. The proposed UNCCIT sought to resolve this conceptual ambiguity by clearly defining international terrorism, and then criminalizing all its forms.

Despite the subsequent definitional debate and the deadlock on the UNCCIT, the UN has annually included "Measures to eliminate international terrorism" in the agenda of the General Assembly. The issue has been regularly taken up by the Sixth Committee in its meetings. The absence of a comprehensive convention and universal definition of terrorism also did not deter the adoption of three subsequent counter-terrorism conventions developed under the auspices of the Ad Hoc Committee to elaborate conventions on international terrorism: the 1997 International Convention for the Suppression of Terrorist Bombings, the 1999 International Convention for the

⁵² Relevant definitions are those from Article 1(2) of the Convention of the Organization of the Islamic Conference on Combating International Terrorism; Article 1 of the 1999 Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism; Article 1(3) of the 1999 OAU Convention on the Prevention and Combating of Terrorism, and Article 1(e) of the 1987 Regional Convention on the Suppression of Terrorism of the South Asian Association for Regional Cooperation (O'Donnell 2006: 872).

Suppression of the Financing of Terrorism, and the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (UN Library 2008).

The 1990s clearly saw terrorism develop into being a staple agenda point for the General Assembly, building on decades of resolutions and declarations (both from the GA and the SC) that condemned terrorism as an unjustifiable atrocity against human rights, and urged for its prevention and elimination at the national and international levels. It was not until the terrorist attacks on the United States on September 11, 2001, however, that operational efforts to counter terrorism came to a head. Discursively though, the situation seemed to only take an even more convoluted turn within this organization of States.

The Discourse Today: Politically Conceptualizing Terrorism in the Post-9/11 Era

The day after four civilian aircraft crashed into the World Trade Center, the Pentagon, and a field in Pennsylvania, the United Nations GA strongly condemned the “heinous acts of terrorism” that caused the loss of almost 3,000 lives in the United States.⁵³ In that resolution, the GA urgently called for international cooperation “to bring to justice the perpetrators, organizers, and sponsors of the outrages of 11 September 2001” and stressed “that those responsible for aiding, supporting, or harbouring the perpetrators, organizers and sponsors of such acts” would be held accountable.⁵⁴ The Security Council, through a separate resolution, also condemned the attacks and called for international cooperation against the terrorist threat.

⁵³ A/RES/56/1.

⁵⁴ Ibid, paras. 3 and 4.

The year before the 9/11 attacks, in September 2000, India had sought to make progress on a comprehensive convention on terrorism by circulating a revised draft of the proposed UNCCIT. That draft contained a definition of the crime of terrorism, which reads as follows:

"1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph1 (b) of this article, resulting or likely to result in major economic loss,

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act."⁵⁵

The aforementioned article in the UNCCIT draft has been at the heart of UNCCIT negotiations. Here, it is clear that the proposed definition of international terrorism precludes any notion that States can similarly commit terrorist acts against civilian populations or other States for political reasons. Article 3 of the proposed convention further suggests that the convention (as well as the existing treaties on terrorism) only applies to acts of terrorism with an international dimension (O'Donnell 2006: 874) by stating, "This Convention shall not apply where the offence is committed within a single

⁵⁵ United Nations General Assembly, Report of the Ad Hoc Committee established by GA resolution A/RES/51/210 of 17 December 1996, Sixth session (28 January-1 February 2002), Annex II, art. 2.1.

State, the alleged offender and the victims are nationals of that State [and] the alleged offender is found in the territory of that State.’’⁵⁶

These two paragraphs led to an early deadlock of UNCCIT negotiations, primarily because it failed to address the notions of State terrorism and self-determination. This led to a failure in attaining a universal definition of terrorism in the nascent years of the debates. In subsequent years, the bone of contention would be seen to veer from the draft definition in Article 2 towards the draft “exclusionary clauses” in the proposed convention that determine what terrorism is *not*. In those debates, arguments by States as to when and how legitimate struggles of peoples for self-determination and against foreign occupation, must be distinguished from terrorism became prevalent alongside arguments that the definition of terrorism must include State terrorism.⁵⁷

In the aftershock of the deadliest terrorist acts on U.S. soil, negotiations on this revised draft treaty gained significant ground from 2001-2002, with agreement being reached on most of the 27 draft articles of the proposed convention (Saul 2005b: 77).⁵⁸ Yet, despite what would have been a watershed moment for the terrorism discourse and definitional debate, a stalemate ensued in 2003 with States reaching their “bottom line”

⁵⁶ United Nations General Assembly, Report of the Ad Hoc Committee established by GA resolution A/RES/51/210 of 17 December 1996, Sixth session (28 January-1 February 2002), Annex II, art. 3.

⁵⁷ Report of the coordinator, above note 81, p. 3; see also the Report of the Ad Hoc Committee for 2005, A/59/37, Annex I, para.15, cited in O’Donnell 2006: 874.

⁵⁸ See Ad Hoc Committee Report (2001), supra n. 142; UNGA 57th Session - 6th Committee, Measures to Eliminate International Terrorism: Working Group Report, 16 October 2002, A/C.6/57/L.9, annex II, pp. 7-8.

positions on matters that included the definition of terrorism in the Preamble and Article 2 in connection with Article 18, the latter contemplating the applicability of the convention to armed forces, as well as to armed struggles (or possible situations of self-determination).⁵⁹

Problems of definition transcended GA discussions and became more severe given that the Security Council unanimously adopted resolution 1373 (2001) that established at the Counter-Terrorism Committee (CTC) - a committee composed of all the 15 members of the Security Council - tasked to monitor States' implementation of legal, institutional, and operational counter-terrorism measures outlined in the resolution. The CTC was given the charge of ensuring that States took steps to a) criminalize the financing of terrorism and freeze funds related to persons involved in acts of terrorism; b) deny all forms of financial support for terrorist groups; c) suppress the provision of safe haven, sustenance or support for terrorists; d) share information with other governments on any groups practicing or planning terrorist acts; e) cooperate with other governments in the investigation, detection, arrest, extradition and prosecution of those involved in such acts; and f) criminalize active and passive assistance for terrorism in domestic law and bring violators to justice.⁶⁰

The SC adopted these general measures to urge Member-States to adopt national legislative efforts without clearly defining terrorism. This consequently underlined concerns about the legal consequences of having each State prosecuting terrorist acts

⁵⁹ *Ad Hoc* Committee Report (2003), *supra* n. 142, p.8; also cited in Saul 2005b: 77. Refer to the Annex for the complete text of the current draft of the convention under negotiation.

⁶⁰ SC Res 1373 (2001).

absent a universal definition of the phenomenon. But since the immediate threat of terrorism necessitated an equally swift reaction, the SC has encouraged Member-States to “unilaterally define terrorism in national law” allowing for wide and divergent operative definitions (Saul 2005b). Terrorism - as a crime under multiple State law - is thus highly subject to interpretation and, arguably, to national interests.

Seemingly recognizing this subjectivity, SC resolution 1373 (2001) requests Member-States to report to the CTC all the steps taken by their national governments to implement the said resolution. Currently, all Member-States have submitted at least one report since the establishment of the CTC, with some States being more proactive in their reporting than others.⁶¹ With negotiations on the UNCCIT stalled, the SC and GA continued to take up terrorism and counter-terrorism measures on an ad hoc basis. Three years after 9/11, the SC went on to establish the Counter-terrorism Executive Directorate (CTED) to aid the CTC in monitoring the implementation of resolution 1373 and coordinate the reporting process among States. The CTED currently requires all Member-States to submit reports on how each country implements the Global Counter-Terrorism Strategy.

It is clear that UN counter-terrorism efforts and the counter-terrorism operations of Member-States on the ground moved forward absent a universal and legally-binding definition of terrorism. In an effort to streamline the divergent national policies and programs, Member-States took advantage of the 2005 World Summit - a high-level

⁶¹ Complete assessments of compliance to Resolution 1373 is available on the UN Counter-Terrorism Committee website at <http://www.un.org/en/sc/ctc/resources/1373>. The most recent assessments were published in 2008, 2009, 2011 and 2015.

plenary meeting attended by 170 Heads of State and Government - to mandate that the General Assembly develop, without delay, a global counter-terrorism strategy.

In 2005, the Secretary General established the Counter-Terrorism Implementation Task Force (CTITF) under the Department of Political Affairs; and on September 8, 2006, the GA finally adopted what is now referred to as the UN Global Counter-terrorism Strategy (UNGCTS). For the first time, Member-States agreed to “a common strategic and operational approach to fight terrorism,” and resolved to take “practical steps individually and collectively to prevent and combat it.”⁶² The aim of the UNGCTS is not to conceptually define terrorism, but rather to bypass the definitional debate and promote comprehensive, coordinated and standardized operational responses to terrorism on the ground.⁶³ Thus, the UNGCTS is conceptually and philosophically founded on the existing treaties and resolutions on terrorist acts in its understanding of terrorism.

Since the adoption of the UNGCTS, the SC has adopted an additional 16 resolutions related to terrorist acts, and the GA another three resolutions related to the Global Strategy. In all these resolutions, the focus has been on condemning particular acts of terror, specifying sanctions and concrete strategies to prevent the spread of

⁶² United Nations Counter-Terrorism Implementation Task Force, <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>.

⁶³ The UNGCTS, which is reviewed by the GA every two years, has four pillars: I. Addressing the conditions conducive to the spread of terrorism; II. Measures to prevent and combat terrorism; III. Measures to build States’ capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard; and IV. Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism (A/RES/60/288).

terrorist networks such as Al Qaida and ISIL (particularly in reference to the financing of terrorism), and urging increased cooperation through information and intelligence sharing.

The decade that followed (2007-2017) can thus be described as one that saw the development of strategic and operational efforts to fight terrorism, rather than the development of the terrorism discourse in terms of its definition and conceptualization. Specialized agencies were established and are continually being proposed - the United Nations Counter-Terrorism Center under the UN Office of Counter Terrorism in September 2011; the AQMT [Al-Qaida]/ISIL [Islamic State in Iraq and the Levant] Monitoring Teams in 2011 and 2015; and a 2017 proposed agency by Secretary General António Guterres to counter transnational terrorist threats. The sovereignty and jurisdiction of Member-States were highlighted and each was given the authority to prosecute terrorism within their own legal system.

In the midst of all these legal and operational developments, negotiations on the definition of terrorism through the UNCCIT had stalled. In 2012, the Ad Hoc Committee (formed by the 1996 resolution) to draft an international comprehensive convention on international terrorism recommended that the Sixth Committee of the GA establish a working group with a view to finalizing the process on the draft UNCCIT (A/RES/67/99). The Working Group was established at the sixty-ninth (2014), seventieth (2015), seventy-first (2016) and seventy-second (2017) sessions of the General Assembly (UN Office of Legal Affairs 2017). Since 2013 then, the Ad Hoc Committee has not convened - and is not projected to reconvene in the near future - despite original calls

for such a group to meet annually. Work on finalizing the UNCCIT draft has instead been left to the working committee established under the Sixth Committee of the GA.

The challenges to coming to a commonly accepted definition of terrorism under the UNCCIT - as well as in relation to a global terrorism convention - are well-established within UN policy circles: While there a significant number of Member-States proclaim that terrorism cannot and should not be resorted to or justified for any reason, other Member-States maintain that people may still engage in political violence under certain circumstances, particularly when needed to fight against foreign occupation.

The consideration of the right to self-determination versus State terrorism has thus played a key role in this definitional debate, particularly in reference to other human rights such as the right to life, liberty and property that acts of terror infringe upon (Ruperez 2005: 15-16). The issue has become more complex in this context as some Member-States have argued for (or against) the inclusion of the use of violence by armed forces against non-state actors in conflicts within the definition of 'international terrorism.' The important questions to ask then is: What set of rights - and consequently, what set of international norms - will trump the other? Should these rights even be pitted against each other? Should exceptions to the use of political violence be made when States employ it, or when civilians use it against State tyranny?

In the 2004 report of the Secretary-General's High-Level Panel on Threats Challenges and Change, the Panel succinctly laid out the challenges in answering these - and other questions - surrounding the definition of terrorism while simultaneously seeking to contribute to resolving the debate:

“159. The norms governing the use of force by non-State actors have not kept pace those pertaining to States. ***This is not so much a legal question as a political one.*** Legally, virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statutes. Legal scholars know this, ***but there is a clear difference between this scattered list of conventions and little-known provisions of other treaties, and a compelling normative framework, understood by all, that should surround the question of terrorism. The United Nations must achieve the same degree of normative strength concerning non-State use of force as it has concerning State use of force.*** Lack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image. Achieving a comprehensive convention on terrorism, including a clear definition, is a political imperative.

160. The search for an agreed definition usually stumbles on two issues. The first is the argument that any definition should include States’ use of armed forces against civilians. ***We believe that the legal and normative framework against State violations is far stronger than in the case of non-State actors and we do not find this objection to be compelling.*** The second objection is that peoples under foreign occupation have a right to resistance and a definition of terrorism should not override this right. The right to resistance is contested by some. But it is not the central point: ***the central point is that there is nothing in the fact of occupation that justifies the targeting and killing of civilians.***”⁶⁴ (Emphasis mine)

In a subsequent 2005 address, Secretary-General Kofi Annan further stressed these points referring to the High-Level Panel report, stating that:

“We do not need to argue whether States can be guilty of terrorism, because ***deliberate use of armed force by States against civilians is already clearly prohibited under international law. As for the right to resist occupation, it must be understood in its true meaning. It cannot include the right to deliberately kill or maim civilians.*** The Panel calls for a definition of terrorism

⁶⁴ United Nations. 2004. “A More Secure World: Our Shared Responsibility.” Report of the UN Secretary General’s High-Level Panel on Threats Challenges and Change.

which would make it clear that ***any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians and non-combatants, with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from any act.*** I believe this proposal has clear moral force, and I strongly urge world leaders to unite behind it.” (Emphasis mine)⁶⁵

Understanding the history and trajectory of the terrorism discourse and the long-standing definitional debate on international terrorism from this chapter, it is not difficult to come to the realization that defining terrorism is not simply a legal question. It is a highly political one. A universal and commonly accepted definition of the phenomenon remains elusive in the face of the Member-States’ inability to transcend their political bottom lines in order to achieve a comprehensive convention to combat the terrorist threat.

The next three chapters attempt to explain why the definition of terrorism remains to be the elusive holy grail of the global terrorism discourse.

Drawing on the theoretical lens of Bob Jessop’s (1990) strategic-relational approach to examining states, the following analysis seeks to unpack the strategic political processes engaged in by UN Member-States over the last two decades to define and frame the discourse of terrorism. Through content and discourse analysis, and the application of social network theory, I argue that the network of political relations between and among states, varying foreign policy interests, and the need for states to wield power in transnational social life, have determined the production and

⁶⁵ UN Secretary General’s address at the closing plenary of the International Summit on Democracy, Terrorism and Security (Madrid Summit). 10 March 2005, Madrid, Spain.

propagation of multiple meanings of 'terrorism' that have led to the current institutional deadlock on the matter. By viewing the state not simply as an autonomous creature, but as a product of social and political relations within a larger global state system, the analysis aims to shed light on how States have used a constructed body of meaning, i.e. the terrorism discourse and the definitional debate to influence general decision-making processes in international security affairs.

CHAPTER 5. The UNCCIT Deadlock: A Definitional Debate as a Function of 'State Projects'

The State Project: A Review

The State as a political actor is far from one-dimensional. As Bob Jessop (1990) posits through his strategic-relational approach to analyzing states (explained in Chapter 2 of this study) the state is a product of its interactions with society, and its institutions and behavior are highly contingent on that relationship. The interactions between state institutions and social factors external to the state brings about what Jessop calls *state effects* - organizational coherence, functional coordination, and operational unity - that enable the state to operate effectively within its jurisdiction, and within the larger system of states.

As highlighted earlier in this study, what makes Jessop's model distinct from other state theories is that it views these resulting effects not as inherent to the state as a political entity, but rather as a result of a *relational* process that produces certain outcomes. The state effects he identifies only emerge through historically contingent *state projects* - i.e., strategies, laws, policies - that endeavor to organize the activities of the state around a coherent political-economic agenda that can, in turn, be projected onto civil society (Jessop 1990: 9, 346). Given that there is a constant struggle for global political power in the state system, states practice *strategic selectivity* in determining political strategies that shape their own institutional structures and interventions in the

global arena. Consequently, the state becomes the “site, generator, and product of strategies” (1990: 260) that enable it to accumulate and exercise power nationally and transnationally.

In this entire process, the role of state projects in the international state system is crucial in that it provides countries with the state effects that they need to secure and maintain their political clout vis-a-vis other states in the system. State projects allow for organizational coherence, functional coordination and operational unity by making sure that the ensemble of state activities is centralized around one goal or political agenda. By doing so, state projects lead to standardized interventions that not only strengthen a state’s power internally, but arguably regulate the balance of power within the globalized state system.

In the context of terrorism and counter-terrorism, adhering to a well-constructed state project is crucial because acts of terror committed throughout history have sought to destabilize or overthrow governments (Perl 2001). Destabilization strategies by those who have engaged in terrorism have included attacks on ‘hard targets’ such as military installations, political organizations, or government officials. But terrorists also know that widespread instability can arguably be better achieved if the economic institutions of the state are also destroyed. Consequently, history is replete with examples of terrorist attacks on public markets, commercial shopping centers, power stations, public utilities, airports, or leisure facilities/activities (Dugdale-Pinton 2005). More recently, the threat of cyber terrorism on states - that is, the use of cyberattacks to target computer systems, identity data, or voting systems in democracies - is added to the mix, and even becomes more alarming since there are no mechanisms in place to globally monitor or prosecute such

acts.⁶⁶ Terrorists ultimately benefit from targeting state strategies and institutions that enhance national economic development and stability.

Jessop's concept of state projects – and his strategic-relational approach to examining this dynamic in a capitalist state system – thus seems apropos given the interplay between foreign policy and political-economic interests of states vis-a-vis the nature of terrorism as a destabilizing force in transnational life. I argue that the absence of a commonly accepted definition of terrorism particularly in light of the deadlock of UNCCIT negotiations is a testament to the impact that state projects have in this context as seen in the non-negotiable policy bottom lines of particular groups of states. Balancing political and economic interests through discussions on arguably the most pressing security concern today is a direct and effective means for a state to influence not only the global counter-terrorism strategy, but more so the balance of power in the state system.

Why State Projects Matter

Global counterterrorism efforts have largely depended on member-states for operationalization. When we therefore look at the counterterrorism policies of individual states, each has its own interpretation of the phenomenon within its legal system with most states even having multiple definitions. As a means by which states can gain jurisdiction and legal authority against non-citizen individuals or groups that commit transnational acts of terror, I thus argue that the process of defining terrorism and operationalizing the mechanisms to combat it is largely characterized by a competition of

⁶⁶ Currently, there is a working group within the UN Counter-Terrorism Implementation Task Force that is trying to address the phenomenon.

state projects. In particular, it is shaped by the state projects of the member-states that have the most at stake in asserting their sovereignty and power in international relations in the context of security issues.

Heavily engaging in the definitional debate at the UN, and standing their ground on a particular proposed conceptualization of the definition of terrorism, can thus be interpreted as an essential part of such states' strategy to protect their national and regional supremacy, as well as enhance their political clout in the global state system. Since shaping the definition of terrorism under international law is fundamentally an undertaking that addresses issues of transnational security vis-a-vis sovereignty, I argue that state projects involved in defining terrorism become key in achieving the effects of hegemony and cohesion that are necessary to maintain the existence and the power of a state (Jessop 1990). Moreover, since each state has the liberty to define terrorism and formulate laws or policies under current legal conditions, the processes by which a state conceptualizes and operationalizes terrorism necessarily reflects particular political interests rather than issues purely about the common good (such as human rights, for instance), and ultimately becomes an instrument of state power in the national and global arena.

Whose State Projects Matter? The Push and Pull in UNCCIT Negotiations

As expounded on in Chapter 4, the definitional debate has perennially come down to a fundamental disagreement on what qualifies as terrorism; that is, whether terrorism should only be understood as political violence "from below" - committed by non-state actors against states - or whether such violence can also be engaged in "from above" -

by states against their citizens or citizens of another state pursuant to a particular state policy. This controversy over who commits terrorism, against whom it is committed, and for what ends, has largely characterized the international discourse on the matter, and has served as the major roadblock to a meaningful convention on international terrorism. The split in consensus is evident; but what exactly is driving this deadlock in negotiations? Which states are playing key roles in shaping the discussions? What state projects matter in the search for a universal definition of terrorism at the United Nations, and how do these state projects specifically affect the discourse?

The standoff appears to be driven by opposition from certain member-states on two major fronts. Reports⁶⁷ of the Ad Hoc Committee on the convention negotiations generally observe differences of opinion concerning these two schools of thought: the first insists that acts of terrorism should be distinguished from legitimate struggles of peoples for self- determination, and against foreign occupation or alien domination; and the other posits that a definition of terrorism should include state terrorism, which can mean either a) “the adoption by a state of a policy of systematic use of violence and intimidation, including practices such as torture, extrajudicial execution and enforced disappearances, in order to eradicate a political or other opposition movement;” or b) “any deliberate resort by a state to acts that *a priori* satisfy the legal definition of

⁶⁷ “Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism held from 25 to 29 July 2005,” A/59/894, Appendix II; Report of the Ad Hoc Committee for 2005, A/59/37, Annex I, para.15.

terrorism, such as the taking of hostages or the use of explosives in ways described by the relevant international treaties” (O’Donnell 2005: 873-4).

The most prominent voices - and consequently, the most relevant state projects - in this debate are those from the members of the Organization of Islamic Cooperation (OIC)⁶⁸ and the United States, with the OIC insisting on having a definition that affirms the right to self-determination against foreign aggressors. What is crucial to note is that the arguments of these two state blocs on what terrorism is under international law appears to be a function of larger and long-standing state projects they hold vis-a-vis the Middle East peace process. In particular, the deadlock can be viewed as a direct consequence of their strategies and foreign policies in relation to first, the Israeli-Palestinian conflict for the OIC; and second, the overall military involvement of the United States in Middle East affairs.

The OIC State Project

The OIC has long taken up and rallied for the Palestinian cause. Time and again, through various OIC resolutions, all OIC members have reaffirmed “the centrality of the

⁶⁸ The Organization of Islamic Cooperation (OIC) is an international organization founded in 1969, consisting of 57 member-states, with a collective population of over 1.6 billion as of 2011. According to its website, the organization aims to be the “the collective voice of the Muslim world” and works to “safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony”. The members of the OIC are: Afghanistan, Albania, Algeria, Azerbaijan, Bahrain, Bangladesh, Benin, Brunei-Darussalam, Burkina-Faso, Cameroon, Chad, Comoros, Cote D’Ivoire, Djibouti, Egypt, Gabon, The Gambia, Guinea, Guinea-Bissau, Guyana, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Kyrgyz Republic, Lebanon, Libya, Malaysia, Maldives, Mali, Mauritania, Morocco, Mozambique, Niger, Nigeria, Oman, Pakistan, Palestine, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, The Sudan, Suriname, Syria, Tajikistan, Togo, Tunisia, Turkey, Turkmenistan, Uganda, United Arab Emirates, Uzbekistan, and Yemen. The OIC has permanent delegations to the United Nations and the European Union.

cause of Palestine and Al-Quds Al-Sharif for the whole Islamic Ummah,” and believed in the “Arab and Islamic character of Occupied East Jerusalem and the need to defend the sanctity of Islamic and Christian holy places” against Israel.⁶⁹ In principle, OIC member-states view Israel’s expansionist plans and occupation of Palestinian territory as illegal, a detriment to Palestinian social and economic conditions, and an endangerment to international peace and security. They have openly condemned continued Israeli military operations - including alleged extrajudicial assassinations of Palestinians - on the Gaza Strip, and continually call on the international community to hold Israel accountable for “the crimes committed in the course of its aggression” into Palestinian territory. In OIC Resolution 1/41 PAL on the Cause of Palestine, OIC member-states hailed the “just and heroic struggle [of the Palestinian people] to realize their legitimate national aspirations and inalienable rights, including to self-determination and freedom (p.5) and, *inter alia*,

“1. [Reaffirmed] the **centrality of the cause of Palestine** and Al-Quds Al-Sharif for the whole Islamic Ummah, and [emphasized] the Arab and Islamic character of Occupied East Jerusalem and the need to defend the sanctity of Islamic and Christian holy places;

2. [Reiterated] its **strong condemnation of Israel, the occupying Power, for its continued and intensified aggression on Islamic and Christian holy places in and around Al-Quds Al-Sharif, for its destruction and confiscation of Palestinian homes in the City of Al Quds**, particularly in the Silwan and Sheikh Jarrah districts, and for all its colonial practices, settlement activities, and wall construction and other illegal measures aimed at changing the legal status of the City of Al Quds, its demographic composition, its Arab and Islamic character; as well as its illegal and provocative raids into Al-Haram Al-Sharif and the excavations underneath Al Haram Al Sharif and Al Aqsa Mosque;

3. [Condemned] Israel’s **systematic violation of the human rights of the Palestinian people, including violations resulting from use of excessive force**

⁶⁹ Draft Resolutions on the Cause of Palestine, the City of Al-Quds Al-Sharif, and the Arab-Israeli Conflict” adopted by the 41st Session of the Council of Foreign Ministers Session of Exploring Areas of Islamic Cooperation. OIC/CFM-41/2014/PAL/RES/FINAL, 18-19 June 2014.

and military operations, which led to the death and injury of Palestinian citizens, including children and women, non-violent peaceful protesters, the use of collective punishment, confiscation of Palestinian land, the wall, and the destruction of properties and infrastructure and all illegal other acts...

5. [Expressed] grave concern over the consequent deterioration of social and economic conditions and the worsening humanitarian crisis in the Occupied Palestinian Territory including East Jerusalem and particularly in the Gaza Strip due to **continued Israeli aggression and blockade and other illegal measures and collective punishment against the Palestinian people**, and commits to work with the international community to pressure Israel, the occupying Power, to end all illegal practices and to abide by its obligations under international law;

6.[Reaffirmed] the **sovereignty of the State of Palestine** over all the Palestinian territory occupied since 1967, including East Jerusalem, as well as its airspace, territorial waters, and borders with neighboring countries;

7. [Reaffirmed] its strong support for the efforts of the State of Palestine **to mobilize international support for the realization of the inalienable rights of the Palestinian people, notably their rights to self-determination and the independence of their State** with East Jerusalem as its capital; and in this regard reiterates its call on the Security Council to favorably consider the application submitted on 23 September 2011 by the State of Palestine for admission to full membership in the United Nations...

14. [Strongly condemned] **the terrorist attacks of the armed Israeli settlers against Palestinian citizens, properties, places of worship** which have increased and is becoming more systematic and organized in recent times under the watch and protection of Israeli occupying forces; and calls on the United Nations, in particular, the Security Council, to assume its responsibilities in this regard by providing the necessary protection for the Palestinian people, and further calls on all states to hold the settlers and their leaders accountable for their crimes; and

15. [Invited] Member States to commence an international campaign aimed at classifying the Jewish settlement movement called “Hilltop Youth” and the “Price Tag” groups **as terrorist groups and organizations which must be included in terrorism lists of countries and international organization** (Emphasis mine).

More recently, pursuant to this overarching state project on upholding the Palestinian cause, the OIC forcefully rejected President Trump’s declaration of Jerusalem as the

capital of Israel, and declared it “null and void” and a “dangerous” step in the peace process. The unilateral declaration of the U.S. President was seen as a violation not only of UN resolutions and international law but also an affront to historical, social and cultural facts about the region and its occupants.⁷⁰ The group vociferously declared:

“1. We reject and condemn the US Administration's unlawful statement regarding the status of Al Quds.

2. Just like the fact that Israel's decision to annex Al Quds and its actions and practices therewith are **never accepted**, we declare that this statement is identically null and void from the point of view of conscience, justice and history.

We invite all members of the UN, the EU and the international community to remain committed to the status of Al Quds and all related UN Resolutions.

3. We emphasize that ***it will never be possible to give up on the aspiration to a sovereign and independent State of Palestine on the basis of the 1967 borders and with East Jerusalem as its capital; which we regard as a prerequisite for peace and security in the region*** (Emphasis mine).

4. We declare that we will act in cooperation and coordination ***to protect the cause of Palestine and Al Quds in the international arena***, especially in the UN.

5. We declare that we will mobilize support in the name of entire humanity to ***strengthen the State of Palestine*** and its institutions in every field.

6. We call upon all countries which have not yet recognized the State of Palestine, which was declared in 1988 in Algeria as the result of the will of the Palestinian people to live freely, to take this vital step. ***Recognition of the State of Palestine has now become essential in order to achieve balance for the prevalence of common sense and conscience in the region in the wake of recent developments.***⁷¹ (Emphasis mine)

⁷⁰ “Istanbul Declaration on ‘Freedom for Al Quds’ Extraordinary Islamic Conference, Turkey, 13 December 2017. OIC/EX-CFM/2017/PAL/Declaration, p.3.

⁷¹ Ibid, p.4.

The provisions of the two statements highlighted above, together with other related OIC resolutions on the cause of Palestine,⁷² clearly define the OIC member-states' collective state project in relation to the Israeli-Palestinian conflict. It is also a strong demonstration of their resolve to defend the right of Palestine to self-determination against Israel in any and all international or UN discussions about peace and security in the region, especially those discussions which seek to frame Palestinian attacks as 'terrorism.'

The OIC insists that given the extant conflict, the acts by Palestine to protect their territorial and national identity need to be distinguished from terrorist acts. A 2012 statement by Egypt representing the OIC at the General Assembly points out that while the OIC believes that nothing can justify terrorism, "terrorism [needs] to be distinguished from the right to self-determination."⁷³ The declarations and statements presented here undergird the OIC member-states' foreign policies and official views on security issues in general, and global counter-terrorism measures in particular.

The commitment to this collective state project is also evidenced by two other major legal instruments adopted by the OIC: The Arab Convention on the Suppression of Terrorism⁷⁴ and the Terrorism Convention of the Organization of Islamic Conference on

⁷² These OIC resolutions are: Resolution No. 1/41-PAL on the Cause of Palestine; Resolution No. 2/41-PAL on the City of Al-Quds AlSharif; Resolution No.3/41-PAL on the Occupied Syrian Golan; Resolution No.4/41-PAL on Solidarity with Lebanon; Resolution No.5/41-PAL on the current Situation of the Peace Process in the Middle East; Resolution No.6/41-PAL on Financial Support Mechanisms for the Palestinian people.

⁷³ Meetings Coverage Summary 67th General Assembly, Sixth Committee 1st & 2nd Meetings (AM & PM), GA/L/3433, 8 October 2012. Available at <https://www.un.org/press/en/2012/gal3433.doc.htm>. Accessed on 12 September 2017.

⁷⁴ League of Arab States, Arab Convention on the Suppression of Terrorism, 22 April 1998, adopted by the Council of Arab Ministers of the Interior and the Council of Arab Ministers of Justice Cairo, April 1998.

Combating International Terrorism.⁷⁵ Both conventions explicitly define terrorism to exclude armed struggle pursuant to liberation and the right to self-determination.

How does this all feed into the terrorism discourse and the definitional debate at the UN? There is no doubt that the OIC states have framed Israel's anti-Palestinian actions in the West Bank and Gaza as terrorist acts, explicitly calling Israel's attacks "terrorist" acts - and consequently making the case for the existence of terrorism as something that can be conducted by non-state actors as well as state institutions, while simultaneously legitimizing the use by Palestinians of similar acts of political violence (especially bombings/suicide bombings) that could be similarly constructed as terrorism under international law. This policy double standard on the basis of a 'human rights' frame is central to interpreting every statement made by the OIC (or any state representing it) in the process of its engagement in the negotiations to define terrorism at the UN.

The OIC is of the belief that excessive military and extra-judicial attacks against Palestinian citizens, property, and places of worship fall within the scope of existing treaties on terrorist acts currently in force. However, while there are particular conventions such as the International Convention for the Suppression of Terrorist Bombings for instance, that tacitly accept certain forms of state terrorism, such a convention clearly excludes acts committed by the military forces of a state under the

⁷⁵ Organization of the Islamic Conference (OIC), *Convention of the Organisation of the Islamic Conference on Combating International Terrorism*, 1 July 1999, Annex to Resolution No: 59/26-P, adopted at the Organization of the Islamic Conference, Twenty-Sixth Session of the Islamic Conference of Foreign Ministers, Ouagadougou, Burkina Faso, July 1999. Available at <http://www.refworld.org/docid/3de5e6646.html> Accessed 20 February 2018.

ambit of terrorism (O'Donnelly 2006: 875). Legal critics have also pointed out that violations committed by the military are already covered under international law in times of conflict or war; necessarily making terrorism a phenomenon that only contemplates international political violence committed by non-state actors against civilians or the state.

This particular bone of contention regarding the scope and application of the proposed convention relative to existing international humanitarian law, particularly when it comes to who commits terrorist acts concerns provisions of draft Article 20 of the UNCCIT. As noted by O'Donnell (2006: 875), only two of the four paragraphs of the Article have been agreed upon, to wit:

“1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.

4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.”⁷⁶

The other two draft paragraphs proposed by the “Friends of the Chairman” exclude the application of the proposed convention to acts already governed by international humanitarian law, such as those committed by military forces of the state:

“2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.

3. The activities undertaken by the military forces of a State in the exercise of their

⁷⁶ “Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism held from 25 to 29 July 2005.

official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.”⁷⁷

This means that if military personnel commit acts of political violence against civilians or other state institutions, such will not be dealt with as terrorist acts under the UNCCIT, but rather as other violations of humanitarian law in the context of war or conflict. The OIC opposes paragraphs 2 and 3 of Article 20 for the reason that there is no mention of foreign occupation by military forces as an exception to the rule. That is, the OIC believes that if there is an instance which would necessitate - and justify - engagement in political violence by citizens (or an unrecognized state), it would be political violence committed pursuant to the exercise of that people’s right to self-determination. The OIC counter proposal for Article 20 (2) aims to exonerate this type of political violence (and arguably, act of terror) under international humanitarian law, by proposing that:

“2. The activities of the parties **during an armed conflict, including in situations of foreign occupation**, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention” (emphasis mine).

In relation to paragraph 2, the OIC proposal for paragraph 3 concerns acts committed by the military forces of a state in the absence of an armed conflict or occupation (O’Donnell 2006: 877). The initial draft by the Friends of the Chairman would exclude acts committed by a state army during peacetime from the definition of terrorism - and consequently - from the consequences of the convention “‘inasmuch **as they are governed** by other rules of international law.’” The draft proposed by the member-states of the OIC,

⁷⁷ Ibid.

however, would exclude these acts by the military “inasmuch **as they are in conformity** with international law,” to wit:

3. The activities undertaken by the military forces of a State in the exercise of their official duties, ***inasmuch as they are in conformity*** with international law, are ***not governed*** by this Convention”⁷⁸ (emphasis mine).

As O’Donnell (2006: 877) notes, the OIC is clearly against the exclusion from the convention of what might be considered acts of terrorism committed by military forces in peacetime, because in their view, such acts should be treated just as rigorously under treaties on terrorist acts as they are under humanitarian or human rights treaties. In other words, military activities that might be considered terrorist acts under the proposed convention should not be excluded simply because they are considered criminal violations of military personnel under other human rights instruments or the UN Charter. The proposal of the OIC aims to effectively apply the same rules to any act of terror, committed by any person or entity, in times of conflict or in peace.

With these fundamental philosophical differences, neither school of thought has budged on the other’s proposal. In subsequent instances, the OIC has even become more vocal in expressing and adhering to their state project on the Palestinian cause. Most recently, on October 20, 2017, a statement⁷⁹ given by Saudi Arabia on behalf of the OIC group reaffirmed their commitment to reaching a consensus agreement on the draft convention and “resolving the outstanding issues including those related to the legal

⁷⁸ Ibid.

⁷⁹ Statement by Saudi Arabia on behalf of the OIC Group Before the Sixth Committee of the General Assembly on Item 107 “Measures to eliminate international terrorism,” New York, 3 October 2017.

definition of terrorism, particularly on the distinction between terrorism and the rights of self-determination by people under foreign occupation, and colonial or alien domination, as well as on the scope of the acts covered by the draft Convention.”⁸⁰ Yet, the organization simultaneously reiterated the “need” to make that distinction in the definition of terrorism, in line with the long-standing collective stance of the OIC group on the issue.

Understanding that the OIC states have no intention of reneging on their state project of upholding the Palestinian cause against Israel - one that has been clearly fleshed out through organizational resolutions and policy statements at UN forums - the reasons behind the standoff on the UNCCIT negotiations become less ambiguous, and the trajectory of the Convention fairly predictable. The OIC will not abandon their collective state project as doing so would result to undesirable state effects for their region: Their sovereignty as Islamic states will be threatened, national and regional cohesion would break down, and their political and economic hegemony (especially within the Middle East) relative to Israel and its allies, might be brought into question.

For these Islamic countries, the state effects of hegemony and cohesion have always been necessary to maintain their political place as a unified Islamic *ummah*⁸¹ not only in the region, but more importantly in world affairs. The “unity and solidarity” of the *ummah* in relation to “the well-being of the Islamic people” has long been an objective of the organization, and was expounded on significantly during the Fifth Islamic Summit

⁸⁰ Ibid, p.3

⁸¹ *Ummah* is the Arabic word for “community” which refers to a nation with common ancestry or geography. Politically, it is viewed as a supranational Islamic community with a common history.

Conference in 1987 dubbed as the "Summit of Islamic Solidarity." An important point of resolution at that Summit was the consensus that the Palestinian question is the core of the Arab-Israeli conflict, and that the *ummah* must insist on the withdrawal of Israel from Palestinian territory for the conflict to be resolved:

"... a just and comprehensive peace in the region can only be established on the basis of complete and unconditional withdrawal of the Zionist enemy from all occupied Palestinian and Arab territories the restoration of the Palestinian people's inalienable rights including its tight to return, to self-determination and to establish an independent Palestinian State on its' national soil, with Al-Quds Al-Sharif as its capital, and under the leadership or the PLO, its sole legitimate representative."⁸²

Shaping regional security and asserting the influence of Islamic states in that region to the exclusion of Israel and its allies thus requires strict adherence to their collective state project. And since 'terrorism' has long been used by each of the opposing sides to characterize the attacks of the other, directing - not only shaping - the terrorism discourse and the definition of terrorism at the global level is an essential and non-negotiable means to carry out that state project. As one member-state of the OIC stated in an interview for this study, the OIC puts a heavy premium on policy alignment when it comes to decision-making at the UN. This group strategy consequently affects the trajectory of the terrorism discourse in the context of the UNCCIT negotiations:

OIC Member-State⁸³: At the GA level, our country is a member of the Non-aligned movement and also a member of the OIC. So, in the GA, mainly the decision can't be separate from those groups. When you're an Islamic country,

⁸² Final Communique of the Fifth Islamic Summit Conference, Kuwait, The State of Kuwait, 26-29 January 1987.

⁸³ The name of the country and the identity of the representative interviewed has been concealed for confidentiality and security purposes.

your decision, your position can't be against what the OIC is. You have to define [your] position first at the OIC [level].

Q: Is there a sanction that the OIC has for countries that don't join in a particular position?

A: No, there is no sanction but it's a political thing. There are many issues apart from terrorism. You have to - when you sit at the OIC - you have to discuss it. You have to see how many countries accede to your position. If not, when the majority wins, that's the position that the OIC takes. You can elaborate on that position, take a further step in a GA meeting, but it cannot be against the OIC. So you align yourself with them. So, in the GA, things don't go fast. It's very slow because of the consensus [rule]. When you need consensus, you have to satisfy every country. It's very difficult with an issue like terrorism because people see differently. It's getting political, mainly. The only thing that the GA can be very active on is development issues. There you can clearly separate that from the politics... But with particular things, the GA is always doing things very slow. And terrorism is one of those.⁸⁴

Thus, it can be argued that unless the OIC is willing and able to adjust or redefine their state project through changed foreign policies or security strategies vis-a-vis the Palestinian cause against Israel, then a universal definition of terrorism - at least within the context of the proposed UNCCIT - appears unworkable. This argument finds support in how the US/WEOG views the OIC as an immobile entity in the negotiations with the latter figuratively carving out a niche for the Palestinian issue into the convention text, as explained by a WEOG member-state representative I interviewed:

Q: Where are the negotiations (on the UNCCIT) now? How would you define the discussions?

State Representative: There has really been no fundamental movement since 2007 on this issue. I would define the discussions on the definition as very much deadlocked. I don't think there have been any marked changes in their positions.

⁸⁴ Interview of author with a UN/OIC member-state representative, 13 April 2015.

My understanding is really, it was the OIC that had a problem with the definition (issue). And they wanted to have this carve out for people who were resisting foreign occupation. So, it's the old terrorist versus freedom fighter discussion. And the OIC has a very specific angle that it comes from, obviously, because of the Palestinian issue. Nothing has really changed on that...there's movement.

We can have negotiations, but we will end up having the same conversations happen. So unless you have some real change on some of the very fixed positions on this, it's going to be very difficult. You have the OIC on one side, and countries like the US and Israel on the other – because of this issue of foreign occupation. And so, I don't see that as moving anytime soon.

Q: You don't think the OIC is going to budge?

SR: Unless there's a split within the OIC on this issue, if there's any kind of softening of positions, I think that would change it. But otherwise, I don't see what would change their position.

In my interview with a former top official of the UN Counter-Terrorism Executive Directorate (CTED), the official also noted that as long as the OIC continues to argue for the exclusion of political violence in the name of the right to self-determination, then the definitional problem cannot be overcome. The only real solution to the impasse fundamentally depends the question of whether violence can be exercised in the name of the right to self-determination, which is central to the Palestinian cause against Israel:

Q: So fundamentally, why do you think there is a deadlock in UNCCIT negotiations?

UN Official: The problem stems from 'occupied territory.' The OIC believes that any action necessary to force an occupied state to leave territory is acceptable...And we don't believe that killing innocent civilians is an acceptable way. If there was some way to split the difference, where it could be said that insurgencies or guerilla warfare, which focuses on military targets, would be an acceptable way to remove an occupying force but not target innocent civilians, then I think we would have a definition. But as long as mainly the Islamic

countries of the OIC argue that anything can be done to remove occupying forces, then there's a real problem here. And that can't be overcome, I think, until such time that there's an agreement between Israelis and Palestinians... But I think if we were able to get a resolution of the Palestinian-Israeli issue, then there wouldn't be an issue with 'occupied territory.' There are people who've written ways to try to bridge this gap. We've come very close a few times but it's never been able to reach an agreement. So as a consequence, we don't have an agreement in the Sixth Committee and it will continue to go on that way until such time as we do have a Middle East agreement that will then allow a definition to move forward. But as long as there's no urgency to define, then we are not compelled to find new ways to try to bridge the gap.

Q: What about the issue of state terrorism as part of the definitional debate? Will the UNCCIT deal with state terrorism?

UN Official: No, this definition will not deal with state terrorism, I can tell you that. Categorically, the Sixth Committee has no authority and has no mandate to deal with state terrorism. It will not, and cannot, because they're going to be negotiating against the 'member-state' and that's not going to happen. So don't go down that road because you're going to hit a stone wall... State terrorism can't be an issue. The United Nations is a universal body of 193 independent states. You can't be negotiating against one of them.

Q: So, if the issue is not entirely about the inclusion of 'state terrorism' in the definition, then what is the definitional problem then? Does it just boil down to the self-determination issue?

UN Official: The definitional problem is: If there are is an occupying power occupying territory, the OIC insists that there be no restriction in ridding the occupiers from that territory. Therefore, anything - including actions against innocent civilians - is okay. As Boaz Ganor, who has written extensively on this said, one man's freedom fighter is another man's terrorist. That holds true in the case of occupied territory... So, the question boils down to if the OIC continues to insist that all means can be used - all military and violent means can be used against the occupiers, then Western countries, and other countries cannot accept that. There can be no cut out like that... You don't kill innocent people. Period.⁸⁵

⁸⁵ Interview of author with former UN CTED official, 10 April 2015.

Textual and contextual evidence indeed point to the highly political nature of the OIC state project built around the Palestinian question. Yet, while the set of strategies and policies outlined above might be viewed as solely political and security-driven, the incessant pronouncements of concern by the organization over the “deterioration of social and economic conditions”⁸⁶ and the humanitarian crisis in the currently occupied contested Palestinian territory (including East Jerusalem), as well as anxiety about the instability from terrorism in the region, supports the argument that members of the OIC organize the activities of their state around a coherent collective political-economic agenda. In 2005, at the Third Extraordinary Summit the OIC highlighted the need for higher levels of economic cooperation and development among its member-states within the context of continued regional conflict. It then outlined steps to address “development, socio-economic, and scientific issues” together with political and security issues as part of a ten-year program of action for the organization.⁸⁷ The state project under scrutiny here was surely created to respond to the alleged terrorist threat from the Israeli state and is arguably a political strategy that aims to maintain the stature and reputation of the Islamic *ummah* in their home region. However, it is also one that highlights the economic interests of the OIC member-states and recognizes the repercussions of political instability on their economies within a global capitalist context. As I have shown, these strategic choices based on political and

⁸⁶ OIC Resolution No. 1/41-PAL on the Cause of Palestine, para. 5, page 5.

⁸⁷ “Ten-Year Programme of Action to Meet the Challenges Facing the Muslim Ummah in the 21st Century” Third Extraordinary Summit of the Islamic Summit Conference, Makkah al Mukarramah - Kingdom of Saudi Arabia, 7-8 December 2005.

economic interests have indeed influenced the construction of terrorism - or more precisely, the impasse in the process - within the international state system.

While philosophically divergent from the state project of the OIC, the state project of the loudest voice in the “West” - the United States - has similarly contributed to the deadlock in UNCCIT negotiations. I now turn to an examination of the American state project and how it has molded the trajectory of the convention discussions, and the global terrorism discourse writ large.

The U.S. State Project

The 9/11 attacks of marked a turning point in the American government's undertaking of an imperative state project to ensure national security and continued political hegemony in the international arena. Through the adoption of arguably norm-breaking counterterrorism policies, and the development of a (highly politicized) discourse on the 'War on Terror,' the United States - during the Bush Administration - rapidly drove terrorism to the top of the policy agenda to prove American resilience and national might in the face of an unknown enemy. Engaged in the rhetoric of "*You're either with us, or against us*" when speaking to the international community, President George W. Bush, Secretary of Defense Donald Rumsfeld, and Secretary of State Colin Powell repeatedly emphasized that their long-term objective was to destroy terrorism through "the death or apprehension of terrorists, the destruction of their infrastructure and support base, and retaliation against States that aid or harbor terrorists" (Richelson and Evans 2001). The definition of terrorism - what acts qualify as terrorism and who qualifies as the enemy - became a state project necessary to establish organizational

coherence, functional coordination, and operational unity (Jessop 1990) of the American State given a situation that challenged the perception of American superiority in the global state system.

Such an undertaking can be viewed at first glance as a purely security-driven strategy against non-state actors that committed violations of international law. However, the framing of the political strategy as a “war,” redefining the acts to be included in the phenomenon, and redrawing the lines between who the enemy should or should not be – all without looking to other States for approval – shows that the American state project to reframe the terrorism (and counter-terrorism efforts) became a strategic endeavor to organize the state activities around a coherent political-economic agenda. While created to respond to security threats, the U.S. national security strategy (especially after 9/11) has been a political strategy that aims to maintain the stature of the United States as a political and economic superpower in a globalizing state system.

Terrorism had been part of the U.S. security agenda prior to the 9/11 attacks, albeit to a lesser extent relative to its status on the national security agenda today. It was in the aftermath of the 1972 Munich Olympic Games when the discourse on terrorism as a foreign policy issue first gained traction as a social problem in the U.S. public sphere (Stampnitzky 2014). At that time, the first conceptualizations of the term by scholars and government officials alike included a wide range of incidents from bomb threats to petty crime during street protests, with most of them describing terrorism as something linked to the international or transnational sphere, while excluding political intent in their characterizations of the crime (Ibid). Amidst all this, a more focused effort to define

terrorism came from a White House memo that referred to *international* terrorism as comprised of acts not considered “traditional violence which is covered by established codes (i.e., common crimes), internal political disputes, civil strife, decolonization, bi-national or international armed conflict,” but rather contemplated the “spread of violence to countries not directly concerned...and the victimization of innocent persons” (White House Memo⁸⁸ cited in Stampnitzky 2014). President Nixon then established the Cabinet Committee to Combat Terrorism (CCCT), with the initial objective of improving security conditions for citizens at home and abroad, as well as for diplomats on U.S. soil. This group was significant in shaping how terrorism was perceived and understood within and outside the state, because it was responsible for bringing together experts to determine definitions and responses to the problem. In 1976, a speech given by the head of the CCCT reinforced the earlier White House memo, alluding to the international nature of violent terrorist acts, and restricting the problem to the spread of violence to persons and places far removed from the scene of struggles of self-determination (Feary 1976, cited in Stampnitzky 2014). Such a definition of terrorism that excluded insurgent violence, the use of violence for self-determination, or even the use of violence by States did two things: first, it immediately confined the performance of terrorism to non-state actors; and second, it clearly delineated the interest of the U.S. government in addressing terrorism, which was to prevent violence from spilling over into the international community. Based on these statements, the United States was not concerned about resolving the conflicts

⁸⁸ NARA, Nixon papers, Tufaro papers, box 1972-3, subject files, secret attachment No.1, CCCT Working Group no. 2, Memo headed “Wednesday, December 13, 1972;” from Stampnitzky (2014).

per se, but was worried that such conflicts could affect not only innocent lives, but more so its own state institutions and power.

The United States recognized this link between state power and the effects of terrorism early enough. After the Munich attacks, it quickly framed terrorism as a phenomenon that erodes international stability – a factor which was and continues to be a major foreign and economic policy objective for the United States (Perl 2001). Given this connection, the United States has clearly understood the ramifications of leaving terrorism unchecked. As a capitalist state that was leading the international community not only in terms of military power, but also and more crucially in terms of economic power during the 1970s and 1980s, it was important to establish an operational definition of terrorism, as well as of counter-terrorism efforts, that adhered to the necessity of preventing conflicts from “spilling over” into the international community, and ultimately harming the general stability of the global political economy. Such initiatives comprised the earliest state project on terrorism that provided organizational coherence, functional coordination, and operational unity to the U.S. state agencies assigned to deal with the threat. As a result, the state project cast an image that the U.S. state was collectively and effectively addressing an international stability problem, thereby boosting its reputation nationally and internationally, as a global political and economic power.

When terrorists attacked the United States on September 11, 2001, however, terrorism as it was framed in U.S. national security policy, lost its purely “international” nature as innocent civilians were victimized within U.S. borders. It was an instance that completely changed the strategic course of U.S. engagement in global counter-terrorism efforts. The state project was thus redefined; and Secretary of State Colin

Powell clearly characterized the strategy as a “full-scale assault against terrorism” (Perl 2001). The result was the U.S.-led “War on Terror,” founded on the mantra, “*you’re either with us or against us.*” To be successful in this war, the United States expressed its willingness to employ all means necessary – arguably, even those against prevailing international norms – to crush terrorism and its perpetrators. Hence, without a global definition of terrorism, and the nebulous norms on self-defense as exercised by states, the United States created a state project around its right to self-defense against terrorists and those who harbor them. Effectively, the “War on Terror” was a political and (when necessary) military strategy meant to re-secure its place as a global superpower despite the fact that the worst terrorist attack on history could be carried out on its shores.

In 2002, the Bush Administration promulgated a revised National Security Strategy (NSS) as a concrete and comprehensive response to the attacks and the terrorist threat from groups such as Al Qaeda. The 2002 NSS stated that the United States was “fighting a war against terrorists of a global reach” but in the same vein, claimed that the “enemy is not a single political regime or person or religion or ideology” but terrorism itself. The NSS went on to define terrorism as “premeditated, politically motivated violence perpetrated against innocents.” Thus, the stated policy of the United States in dealing with terrorists was that it will make no concessions to their demands and strike no deals with them. Likewise, it made no distinction between terrorists and those who knowingly harbor or provide aid to them.

The 2002 NSS also enumerated various methods to be used by the United States to combat terrorism. But of particular interest is that which provides:

"[We will disrupt and destroy terrorist organizations by] defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country."⁸⁹ (Emphasis mine.)

This statement is perhaps the most significant in the post-9/11 state project, as it championed the doctrine of preemptive strike - and the use of the military - as the primary means by which the United States seeks to quell terrorism. It was the statement that had raised numerous questions on the relevance of present international institutions and norms governing military action, as well as concern from other states about an emerging, new form of American imperialism. For the first time since the national discourse on terrorism was formed in the 1970s, the long-standing strategies of U.S. policy against aggression - deterrence, containment, and even diplomacy - had lost their relevance. The state project was thus defined by strategies that challenged the "outdated" nature of international norms on aggression due to the changing nature of the enemy. The Bush Administration even argued that the United States (or any state for that matter) has a right to forestall hostile activities by adversaries "even if uncertainty remains as to the time and place of the enemy's attack."⁹⁰ It would be unwise to wait for threats to materialize as such would be suicide. To wait for the enemy to build up

⁸⁹ The National Security Strategy of the United States of America, September 2002. Available at <https://www.state.gov/documents/organization/63562.pdf>. Accessed on 16 October 2015.

⁹⁰ "U.S. National Security Strategy: Prevent Our Enemies From Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction," Speech delivered by President George W. Bush, West Point, NY. June 1, 2002.

arms, fully plan an attack and launch the attack before it strikes was deemed unacceptable. The United States believed that it had a right to prevent such an attack based on the conviction that America has a transcendent role in making the world "not just safer but better" (Newhouse 2003: 11).

Coming into the UNCCIT negotiations with this policy in mind, the United States thus seeks to exclude acts committed by military forces in the absence of a conflict or occupation, from the ambit of the proposed convention on international terrorism. This exclusionary clause continues to act as a roadblock to consensus since the U.S. continues to argue that such acts by the military should not be considered acts of terror under the proposed convention, but might otherwise be addressed through existing international human rights law and international law prohibiting aggression and the violation of sovereignty. One critique of this exclusion is that excluding acts committed by state military forces merely because they are governed by international human rights standards or basic principles of international law would create an "unacceptably broad limitation on the scope of the future Convention" (O'Donnelly 2006: 877). As stated earlier, the OIC argues against this stance, positing that acts of terrorism committed by military forces in the exercise of their official duties during peacetime should be treated similarly under existing terrorism treaties, as well as future terrorism conventions (O'Donnelly 2005: 877-8).

The 2012 National Security Strategy of the United States focuses on terrorist organizations - their networks and affiliates - as the "paramount terrorist threat" to the country (NCTS, 1). As such, it clearly does not recognize state terrorism, nor does it acknowledge that the military as a state apparatus can engage in acts of terror under

international law (with the latter being treated under other international norms and conventions). But what is more significant in terms of understanding the U.S. state project in relation to the country's engagement in UNCCIT negotiations is the explicit statement that the entire strategy is "embedded within an overall strategy of enhanced U.S. economic and political engagement" with other states in the Middle East, South Asia and Southeast Asia "that fosters peace, prosperity and democracy" in these regions (NCTS, 16). Subsequently, in the 2015 National Security Strategy, which recognizes the "evolving threat" of terrorism owing to the burgeoning network of al-Qa'ida affiliates and ISIS/ISIL, the United States explicitly declares that it has shifted away from fighting large, costly wars pursuant to counterterrorism efforts in Iraq and Afghanistan, and instead will pursue

"a more sustainable approach that prioritizes targeted counterterrorism operations, collective action with responsible partners, and increased efforts to prevent the growth of violent extremism and radicalization that drives increased threats... [The United States] will work to address the underlying conditions that can help foster violent extremism such as **poverty, inequality**, and repression. This means supporting alternatives to extremist messaging and **greater economic opportunities** for women and disaffected youth. We will help **build the capacity of the most vulnerable states and communities** to defeat terrorists locally. Working with the Congress, we will **train and equip local partners and provide operational support** to gain ground against terrorist groups. This will include efforts to better fuse and share information and technology as well as to support more inclusive and accountable governance" (2015 National Security Strategy, p.9, emphasis mine).

These statements in the 2012 and 2015 NSS clearly illustrate that the state project surrounding terrorism is more than merely a political or military initiative that is isolated from the value form of the state. This state project – as well as those that have preceded it over the past four decades – has constructed the definition of terrorism and terrorists, established the scope and limits of state action against it, and embedded all these in

the overarching economic relations that the United States engages in as a capitalist state. These strategic choices have significantly influenced the construction of terrorism at the global level based on larger (political and economic) U.S. interests.

Upon the transfer of power to the Trump administration in January 2017, the state project of the United States in relation to security and terrorism has once again evolved. The messaging and rhetoric of cooperation and collective action that permeated the security strategies under the Obama administration has now been constructed within the context of an overarching “America First” policy. This “America First” policy is explicitly stated in the 2017 National Security Strategy signed by President Donald Trump in December 2017. Charting a “new and very different course” (2017 National Security Strategy, p. i), President Trump declares that the goal of the new NSS is to prioritize the interests of U.S citizens and protect the sovereign rights of the United States as a nation. By doing so, the strategy reframes the security interests of the country from an omnipotent, exceptionalistic, and dominant standpoint, citing that “the whole world is lifted by America’s renewal and the reemergence of American leadership;” hence the need to “promote a balance of power that favors the United States, our allies, and our partners” (2017 NSS, p. ii).

In the 2017 NSS, threats to security have been largely grouped into threats to “the American Way of Life,” which includes first, threats against the U.S. border from weapons of mass destruction, biothreats, and immigration; and second, terrorist threats, particularly Jihadist terrorists and transnational criminal organizations – including cyber criminals. As to the first group of threats, the new strategy states that

“[s]trengthening control over our borders and immigration system is central to national security, economic prosperity, and the rule of law. Terrorists, drug traffickers, and criminal cartels exploit porous borders and threaten U.S. security and public safety” (p.9).⁹¹

With regard to the second set of threats, the focus on Jihadist terrorists as the “most dangerous threat to the Nation” (2017 NSS, p. 10) necessarily delimits the terrorist threat to persons or groups that subscribe to Islamic extremism. Taking the new policy on immigration and border protection together with the association of terrorism with a particular religious fundamentalist movement, it can be argued that the state project against terrorism has indeed taken a new turn. However, careful scrutiny of the 2017 NSS might tell us that the will of the United States to maintain power, internal cohesion, and hegemony through security issues are similar, if not even stronger.

⁹¹ The renewed – and more intense - focus on immigration and border control under the Trump administration has been seen to impact the manner by which the United States carries out its counter-terrorism policies and operations. In effect, the state project on international terrorism is now arguably increasingly shaped by the “crimmigration industry” within the United States. “Crimmigration” refers to an important development in US immigration law today: the convergence of immigration and criminal law (Stumpf 2006: 379). Immigration law has traditionally been linked to foreign policy rather than the criminal justice system; yet the increased link between narratives of immigrants as criminals, and the need to exclude such individuals from membership in the US polity, has gained ground within at least the last 20 years (Stumpf 2006: 380). In effect, one can argue that the boundaries of states vis-à-vis who can stay within those states have significantly expanded state power. In order to preserve state power that emanates from crimmigration, the overall state project on security and terrorism necessarily has to provide for immigration as a security threat, with immigrants or the “other” as threats, criminals, and even terrorists. Such framing at the intersection of immigration and terrorism, while not largely falling within the scope of this study, is indeed a topic that requires further sociological examination. The way in which such a social fact influences the US state project and the terrorism discourse as a whole is another aspect of this inquiry that requires a separate and extensive exploration.

The America First policy frames the terrorist threat as an external (or international) phenomenon perpetrated by the “other,” particularly rogue Islamic states and entities. The “othering” of the terrorist here – a process by which a minority group is differentiated and cast as the “other” as part of a social or political agenda, on the argument that their culture and beliefs are fundamentally different (and deemed as a threat) to the rest of society (Said 1978) - necessarily ties well into the recent narrative of the Trump administration that securing borders against immigrants, who can be criminals or terrorist threats to US territory, is easily justified.

Not part of the “other” in this narrative, are US allies and partners, who will also benefit from the balance of power sought by the United States under this new NSS. And it is clear that its traditional “Western” allies, including Israel, still belong. In applying the new strategy to the various geopolitical regional contexts, the United States “seeks a Middle East that is not a safe haven or breeding ground for jihadist terrorists, not dominated by any power hostile to the United States, and that contributes to a stable global energy market” (2017 NSS, p. 48). It blames the instability in the region to Iran, Syria, and jihadist ideology propagated through ISIL/ISIS. It clearly states that the Israeli-Palestinian conflict is not to blame:

“For generations the conflict between Israel and the Palestinians has been understood as the prime irritant preventing peace and prosperity in the region. Today, the threats from jihadist terrorist organizations and the threat from Iran are creating the realization that **Israel is not the cause of the region’s problems**. States have increasingly found common interests with Israel in confronting common threats. (2017 NSS, p.49, emphasis mine).

While the United States remains “committed to helping facilitate a comprehensive peace agreement that is acceptable to both Israelis and Palestinians,” the singling out

of Israel as the state that is not at fault in the region might tell us something about the partnership between the US and Israel on the conflict. With President Trump openly supporting Israeli interests, and declaring Jerusalem as the capital recognized by the United States, it is not difficult to argue that the state project of the United States – in relation to security and terrorism, particularly in the Middle East – remains built around this perennial conflict. The rhetoric might have changed, but the fundamental principle relevant to the application of the larger state project in relation to the terrorism discourse at the UN, remains unchanged.

The examination of the state projects of the OIC and the United States clearly illustrates the impact of the need for states to wield power in transnational social life. This need, as expressed through overarching state projects on global security, has determined the production and propagation of multiple meanings of ‘terrorism,’ which in turn has led to the current institutional deadlock on a convention that could have universally defined and operationalized the phenomenon. In this chapter I have shown that the state, as Jessop theorizes, is indeed far from an autonomous creature; it is a product of social and political relations within a larger global state system, which uses discourse as a constructed body of meaning to establish its presence among the community of states. In this case, the state engages - and arguably manipulates - the terrorism discourse to influence decision-making processes on security issues at the UN, and more significantly, in broader international affairs.

CHAPTER 6. The Role of Networks: Alliances, Foreign Policy, and the Terrorism Discourse

The previous chapter has shown that the state projects of the OIC countries and the United States - particularly in reference to laws, foreign policies, and strategies in relation to regional and global security - have contributed to the deadlock in UNCCIT negotiations. As instruments for cohesion and hegemony, these state projects are necessarily founded on, and effectively reflect, the values and ideologies of the polity they represent. Thus, while the quest for a universal definition of terrorism appears to be discursively and operationally shaped by the state projects elaborated on in the previous chapter, I argue here that political alliances - the networks of states within the United Nations - play a crucial role in exacerbating the fissures in the terrorism discourse, which are brought about by historical political interests and divergent ideologies. Following the divide brought about by the two major state projects directing the debate, there are thus two major political blocs through which ideological differences are advocated: the first is the network of Organization of Islamic Cooperation (OIC) states, and the second is the network of non-OIC member-states largely allied with the “West,”⁹² that is, the United States, Europe, and states friendly with the plight of Israel.

⁹² I use “West” here not as a geographical reference denoting uniformity by virtue of location or region, but as a historical/cultural/political reference to states traditionally linked to or allied with the United States and Europe (as opposed to Islamic, Asian and African states). It is not meant to denote any homogeneity between or among states in that group, or deny any hybridity that

As argued earlier in this study, the main point of contention between these network of states lies in the question of whether acts of groups (or national movements) fighting for self-determination - or corollary to that, a state's efforts to secure territory through occupation in an armed conflict - can qualify as terrorism under the proposed convention. The OIC strongly believes that acts pursuant to the right of self-determination should not be covered by the proposed convention. The United States and its allies, on the other hand, believe that all terrorist acts regardless of motivation or justification, must be contemplated by the UNCCIT; these acts, however, can only be perpetrated by non-state actors.

This fundamental ideological divide between these two major blocs has been clear throughout the years of UNCCIT negotiations. Yet this behavior between and among political allies, particularly in reference to global security affairs, is not new. This chapter probes deeper into that dynamic by examining the role such networks have played in perpetuating and strengthening certain political ideologies and policies, and consequently, the trajectory of the terrorism discourse at the UN. At this point, a review of the analytical import of social network theory is apropos.

Social Network Theory: A Review

Social Network theory posits that social relations can more effectively and efficiently be understood through a complex system of social structures referred to as a 'network' (Carrington and Scott 2011). A network is theoretically a system of socially

occurs outside the category between "East" and "West." The term is employed purely for ease of analytical reference to the identified network of states.

relevant elements that are somehow connected (Wasserman and Faust, 1994) by one or more relations referred to as 'ties' (Marin and Wellman 2011). Thus, network analysis is concerned with relationships defined by links among "agents" or "nodes" - individuals, organizations, or even states - addresses the associations among these nodes rather than their particular attributes (Hafner-Burton et. al. 2009: 562). No assumptions are made about characteristics of nodes or homogeneity within the network. As Hafner-Burton et. al. (2009: 562) point out, what the method of analysis is founded on can be summarized into three principles:

- a. Nodes and their behaviors are mutually dependent, not autonomous;
- b. Ties between nodes can be channels for transmission of both material (e.g. weapons, money, disease) **or non-material products** (e.g. information, beliefs, norms); and
- c. Persistent patterns of association among nodes create structures that can define, enable or restrict the behavior of nodes (emphasis mine).

Consequently, social network theory and network analysis allow us to analytically explore any kind of ties between entities and, ultimately, the behavior and interaction between those entities because of those ties. We are then able to make inferences about the dynamics of social life within that network given a particular set of social facts.⁹³

Social network scholars conceptually think of networks as the primary building blocks of the social world. Hence, network analysts are able to examine patterns of behavior within the network to see how they affect individual behavior and the network as

⁹³ Emile Durkheim (1895) posited that sociology is the empirical study of social facts. He first defined the term to consist of "manners of acting, thinking and feeling external to the individual, which are invested with a coercive power by virtue of which they exercise control" over that person. Durkheim further pointed out that social facts are "representations and actions" that cannot and should not be confused with "organic" or "physical" phenomena. A social fact is something that is constructed by a community and is used to influence actions, behaviors, and expectations of those who belong to it.

a whole. Following these principles, international relations scholars view networks as sets of relations that form particular structures that might constrain and/or enable agents in the international system (Hafner-Burton et. al. 2009: 560). While traditional structural analyses of the international state system focus on actor attributes, social network theory or network analysis instead delves into “how material and social relationships create structures among actors through dynamic processes” in transnational life (Ibid). Such approach paves the way for rethinking core concepts in the study of state relations, the most notable of which is the exercise of power in the system.

On a practical note, networks are regarded in international relations as avenues for collective action and cooperation, tools for exercising influence, or means of carrying out international governance (Ibid). That said, political science and international relations literature has largely focused on the *effects* of non-hierarchical (i.e., non-state) or transnational activist networks (including terrorist networks) on their environment or on intergovernmental policies, rather than on the effects of hierarchical (i.e. state) network structures on international affairs. As observed by Hafner-Burton et. al., the early scholars of network analysis in the 1960s that studied emerging global structures based on trade networks, international governance organizations, and diplomatic relations stopped short of using network theory “to test or predict network effects on international politics” (2009: 562).

It is at this point that the sociological take on social network theory - one that explores *how* the ties that bind (or separate) states as actors in the global stage, particularly within the UN - becomes most relevant and useful in our quest to explain the long-standing definitional debate on terrorism. Given what we have learned about the

effect of state projects and collective behavior in the previous chapter, it is important to ask: What is the role that geopolitical alliances play in the UNCCIT debate, and in the terrorism discourse as a whole? What alliances or state blocs matter in the negotiation process to define terrorism, and why? How significant are state networks in constructing a universal and legally-binding definition of terrorism? In order to answer these questions, we necessarily have to first identify the strategic alliances involved in this particular process, and then examine the behavior of these state blocs in relation to voting and decision-making in the UN, before exploring how these alliances affect efforts to define terrorism in the context of the UNCCIT.

United We Stand: The Strategic Alliances that Count

It has been established in the immediately preceding chapter that the definitional debate in reference to the UNCCIT negotiations fundamentally boils down to two strands of thought: first, that the convention should differentiate between terrorism vis-a-vis the right of peoples to exercise self-determination in the context of occupied territory (even with the use of political violence); and second, that certain apparatuses of the state - particularly the military - can employ violence in non-conflict situations pursuant to state policy without such acts being considered terrorism under the convention. It has also been shown that the views on those issues, while not homogenous, are largely split along evident ideological lines that run through two political/geopolitical alliances: The OIC states on the one end, and states allied with the United States or the “West” on the other.

Examining records and reports of general voting behavior at the UN along with policy statements of countries within these two networks of states, I argue that this

coalescing behavior among the OIC on the one hand and the US/West on the other - observed in the definitional debate on terrorism - is a long-standing phenomenon that is not peculiar to the terrorism discourse. The dichotomy is not uniquely a function of the contested provisions of the proposed convention; rather, these divisions run deeply along political lines, and the well-established alliances and regional groupings at the UN serve as vehicles through which these ideological divisions are discursively and operationally reified. These sub-networks within the international network of states thus play heavily into the dynamics of negotiating the definition of terrorism under the UNCCIT.

Data from the US State Department on UN Voting Behavior from 1996 to 2016 provide support for the idea that the political rift is exacerbated by alliances, showing that political stands on issues have largely been related to - and even dependent on - what state bloc a country belongs to. These State Department reports,⁹⁴ which examined the trends in voting behavior of all member-states individually and by political group (among other metrics) as they coincided with US votes on resolutions or declarations at the

⁹⁴ As per the State Department reports, interpretation of the metrics and percentages must be done with a view to nuances that are brought about by absences and abstentions in voting: "The tables in [these] reports provide a measurement of the voting coincidence of UN member countries with the United States. However, readers are cautioned about interpreting voting coincidence percentages. In Section III (General Assembly Overall Votes), Section IV (General Assembly Important Votes and Consensus Actions), and the Annex, the percentages in the column of the tables titled "votes only," are calculated using only votes on which both the United States and the other country in question voted Yes or No; not included are those instances when either country abstained or was absent. Abstentions and absences are often difficult to interpret, but they make a mathematical difference, sometimes significant, in the percentage results. The inclusion of the number of abstentions and absences in the tables of this report enables the reader to consider them in evaluating voting coincidence percentages. The percentages in the column of the table titled "including consensus" offer another perspective on General Assembly activity. Consensus resolutions indicate agreement with U.S. positions, so adding these to the vote totals more accurately reflects the extent of cooperation and agreement in the General Assembly.

General Assembly, suggest that that for years the OIC and the US/West have seldom voted similarly on issues involving categorical voting at the UN. Together with what we have learned about the strict adherence to state projects of these two groups, it can then be argued that the OIC and the US/West participate in UN discussions, debates, and voting procedures based on how their allies vote (or should vote).

Figure 2 provides evidence for this argument as it shows the coincidence, on average, of voting behavior between the OIC and the United States over time. The table shows “votes only” percentages and “consensus” percentages, with the former calculated using only votes on which both the United States and the OIC member-states in question voted ‘Yes’ or ‘No,’ while the latter is calculated from instances when states indicated agreement with U.S. positions on consensus resolutions⁹⁵. Adding votes on consensus resolutions to the vote totals “more accurately reflects the extent of cooperation and agreement in the General Assembly” (2012 Report).

⁹⁵ Consensus resolutions are those reached when all member-states have agreed to adopt the text of a draft resolution without taking a vote. Reaching consensus is not the same thing as being unanimous, as states can still disagree on certain phrases or paragraphs on the consensus resolution despite agreeing to it in general.

Figure 2. Voting Practices in the United Nations - Coincidence of Organization of Islamic Cooperation (OIC) States Voting Behavior with United States Voting Behavior, 1996-2016.

| YEAR | Coincidence with US - Votes only (Avg %) | Coincidence with US - Including Consensus Votes (Avg %) |
|--------------------|---|--|
| 1996 | 49.20 | 82.40 |
| 1997 | 36.10 | 84.80 |
| 1998 | 35.30 | 86.30 |
| 1999 | 31.40 | 83.70 |
| 2000 | 32.80 | 85.10 |
| 2001 | 20.40 | 70.00 |
| 2002 | 20.60 | 80.30 |
| 2003 | 15.90 | 77.40 |
| 2004 | 12.30 | 77.90 |
| 2005 | 13.90 | 73.70 |
| 2006 | 13.10 | 71.40 |
| 2007 | 8.50 | 69.30 |
| 2008 | 14.00 | 75.00 |
| 2009 | 25.90 | 80.70 |
| 2010 | 34.20 | * |
| 2011 | 37.20 | * |
| 2012 | 17.90 | * |
| 2013 | 40.70 | * |
| 2014 | 43.70 | * |
| 2015 | 46.30 | * |
| 2016 | 47.70 | * |
| OVERALL AVG | 28.43 | 78.43 |

*Data not available for given year.

Source: Data culled and calculated from Congressional Reports on UN Voting Behavior from 1996-2016, United States State Department Bureau of International Organizational Affairs.

It is important to note for analytical purposes that absences and abstentions are also not included in the “votes only” calculations made by the US State Department.⁹⁶ While an absence or abstention might arguably cause a significant mathematical difference in the “votes only” percentages, the said indicator remains an important tool in establishing patterns of behavior among states who choose to cast categorical votes on specific resolutions or declarations. The “votes only” data ultimately provides insight into not only patterns of voting over time but also sheds light into the workings of state power in instances when consensus actions are not on the table. These instances illustrate how state power - and network power (i.e., the influence of the alliance’s collective thinking on its individual members) - is either magnified or minimized.

With this in mind, it can be argued that for the last two decades - from 1996 to 2016 - the pull of the OIC network and the US/West bloc on the state behavior of each of their individual allies, at least in terms of voting in the General Assembly - has been significant. The data shows that the overall voting behavior of OIC members at the General Assembly has been in stark contrast to how the United States votes on resolutions, declarations, or consensus actions. On average, OIC members (as a collective unit) vote a “yes” with the United States only 28% of the time. The twenty-year average on

⁹⁶ It is important to note that being absent or abstaining from a vote at the UN GA may actually be done pursuant to a political stance or government policy that might not be directly related to the vote or issue at hand. Unless it affects their interests or their allies’ interests directly, not all member-states choose to take a categorical stance on a GA resolution or declaration (since such are non-binding and non-enforceable). Abstentions or absences can thus be viewed as a strategic vote or (non)action, without categorically casting one for strategic political reasons. Nevertheless, an abstention may have the same effect as a ‘yes’ or as a ‘no’ depending on how the other members voted (Felsenthal and Machover 2014). The tactical move might even symbolize a break from a collective stance on a certain matter, without explicitly severing ideological or political ties with one’s closest allies.

consensus votes on the other hand appears higher with coincidence in voting calculated at 78%. While the latter number seems to suggest greater agreement between the two networks of states, this figure must be put into perspective: Coincidence on consensus votes between the United States and the Western blocs (including the Western European and Others Group, the European Union, Eastern Europe, and the Nordic Countries) average significantly higher, in the 85 to 95% range.⁹⁷ This might suggest that while the OIC states are willing to come support consensus actions on issues presented at the GA - such as, but not limited to, violence against women, trafficking against women and girls, human rights, torture, or the organizational budget - the said group of states is not willing to bend as much as other state blocs when it comes to agreeing with the United States; and the United States is equally adamant in such discussions and decision-making situations vis-a-vis the OIC.

On the other hand, data on the coincidence of UN voting practices between the United States and the Western European and Others Group (WEOG) - to which Israel has gained permanent membership in 2004 - suggests that traditional geopolitical and/or economic allies of the United States have voted with it similarly on issues involving categorical votes at the GA. Figure 3 shows that on average, the states belonging to the WEOG have voted “yes” with the United States about 65% of the time over the past twenty years. On consensus votes, the average is higher with voting behavior coinciding almost 89% of the time.

⁹⁷ Based on US State Department UN Voting Behavior Reports from 1996-2016.

Figure 3. Voting Practices in the United Nations - Coincidence of Western European and Others Group (WEOG)⁹⁸ Voting Behavior and Israel Voting Behavior with United States Voting Behavior, 1996-2016[#]

| YEAR | Coincidence with US - Votes Only (Avg, %) | Coincidence with US - Including Consensus Votes (Avg, %) | ISRAEL Coincidence with US - Votes Only (Avg, %) | ISRAEL Coincidence - Including Consensus Votes (Avg, %) |
|-------------|---|--|--|---|
| 1996 | 70.70 | 92.90 | 95.00 | 98.90 |
| 1997 | 70.90 | 93.30 | 93.30 | 98.50 |
| 1998 | 81.30 | 94.30 | 94.10 | 98.90 |
| 1999 | 67.10 | 92.60 | 90.00 | 97.80 |
| 2000 | 61.50 | 92.00 | 96.20 | 99.20 |
| 2001 | 54.40 | 90.60 | 91.70 | 98.20 |
| 2002 | 49.90 | 87.70 | 92.60 | 98.30 |
| 2003 | 46.10 | 86.80 | 89.70 | 97.50 |
| 2004 | 45.90 | 86.90 | 93.20 | 98.40 |
| 2005 | 46.40 | 84.40 | 90.50 | 97.20 |
| 2006 | 44.90 | 83.30 | 84.20 | 95.20 |
| 2007 | 41.30 | 81.90 | 86.40 | 96.20 |
| 2008 | 46.40 | 85.20 | 87.70 | 96.60 |
| 2009 | 65.30 | 91.40 | 97.00 | 99.20 |
| 2010 | 77.40 | * | 98.00 | 91.80 |
| 2011 | 82.60 | * | 92.80 | 98.00 |
| 2012 | 63.30 | * | 92.00 | 98.00 |
| 2013 | 84.50 | * | 94.70 | 98.50 |
| 2014 | 87.00 | * | 93.30 | 100.00 |
| 2015 | 86.00 | * | 92.90 | 98.00 |
| 2016 | 96.60 | * | 94.30 | 98.00 |
| OVERALL AVG | 65.21 | 88.81 | 92.36 | 97.73 |

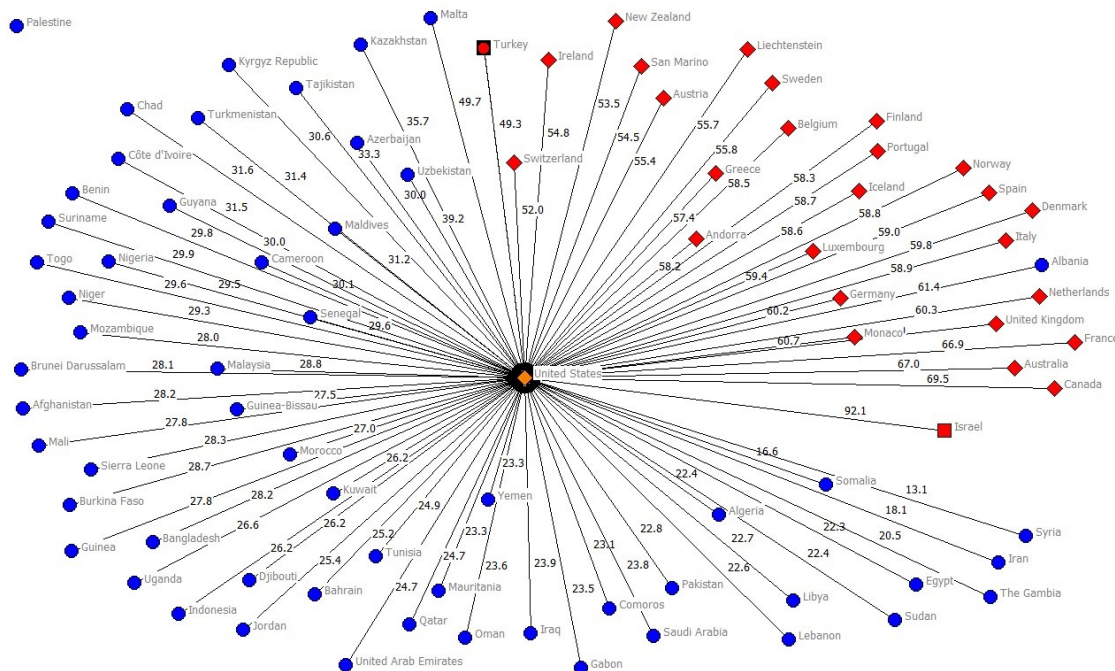
[#]Averages calculated using voting data available from multiple US Congressional Reports on UN Voting Behavior from 1996-2016.

*Data not available for the given year.

Source: United States State Department, Bureau of International Organizational Affairs.

⁹⁸ The WEOG is one of five unofficial regional groups in the United Nations formed in 1961 that acts as a voting bloc and negotiation forum. As of 2010, there are 28 WEOG member-states: Andorra, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. The United States of America was granted sole observer status in the group. In May 2000 Israel became a full member of the WEOG on a temporary basis thereby enabling it to put forward candidates for election to various UN General Assembly bodies. In 2004 Israel obtained a permanent renewal to its membership. (UN Department for General Assembly and Conference Management. Available at <http://www.un.org/depts/DGACM/RegionalGroups.shtml>)

Graph 1. Weighted* Voting Behavior of OIC and WEOG states relative to US Voting Behavior at the United Nations General Assembly, 1996-2009



Source: United States State Department, Bureau of International Organizational Affairs.

*The ties represent the average voting coincidence of one state to US votes on categorical (yes/no) items at the UN General Assembly using “votes only” data from Congressional Reports on UN Voting Behavior from 1996-2016.

Legend:

Blue Circle - OIC member-state

Red Diamond - Western Europe and Others Group (WEOG) member-state

Red Circle in Black Square - member of both the OIC and WEOG

The network graph above (Graph 1) provides another view of the coincidence of OIC and non-OIC (WEOG) votes with US voting behavior over the past two decades, with the ties weighted based on the twenty-year coincidence averages for every state vis-a-vis the United States. The nodes are arranged in the graph with states having the least voting

coincidence with the United States at the bottom right. As one moves clockwise, the average voting coincidence increases.

Here, we see that the state which has predominantly voted at odds with the United States in the General Assembly over time is Syria with its votes coinciding only 13% of the time. At the extreme end is Israel, which has voted almost identically with the United States, at least over the past two decades, averaging a 92% coincidence in yes/no votes.

I have chosen to present a weighted network here, to examine the node strength of the United States - as a key player in the discourse under study - with OIC states on the one hand, and its traditional allies on the other. Node strength takes into consideration the weights of ties and has been the preferred measure for analyzing weighted networks (Opsahl 2010, citing Barrat et al., 2004; Opsahl et al., 2008). While node strength might be criticized as a “blunt measure” of node centrality - that is, how “central” a node is in a network or how influential it is based on ‘nearness’ or ‘farness’ - as it only considers the level of involvement of a node within the network (Opsahl 2010), I argue for its usefulness in the present analysis, as it precisely this level of involvement of states vis-a-vis one node (the United States) in relation to voting behavior that I am examining. Ultimately, the node strength of the United States when it comes to voting behavior in the GA might give us a sense of the relative influence or power of the country in terms of shaping discourses using symbolic GA voting as a tool.

By weighting state ties in this particular graph, the data suggest that there are certain states that not only vote similarly, but that such actors do so together with other states that possess common attributes. In this case, the average voting coincidence with US votes shows that OIC states have significantly voted in the opposite direction, along

alliance lines. Similarly, the WEOG states have voted in line with their bloc, and analogously with the United States - even if the US only has observer status in that political group. What is most striking here is that the tie between the United States and Israel - at least in terms of voting behavior - is very strong compared to other states. While voting along (WEOG) bloc lines, the tie between Israel and the United States is sui generis within their own alliance, voting similarly almost 30 points above the WEOG bloc average. Since the beginning of voting behavior reports in 1986, Israel and the UK have marked the highest voting coincidence in the General Assembly. The trend continues to this day.

Such findings on the strength of the tie between the US and Israel (and corollary to that the weakness of ties between Israel/the US and OIC states given their disparity in voting behavior) might provide support for the argument made in the previous chapter: The United States and Israel are key allies in the international arena, and the state project of the United States in relation to security issues in general, and the terrorism discourse in particular reflects such a tight relationship. The US is keen on supporting the Israeli cause against Palestine as part of its state project on security issues; and the OIC will hold ground to defend the Palestinian cause against Israel with the former being a member of its political alliance. Given the pull of alliances on state behavior, together with the explicit state projects of both blocs, it is no surprise then that the negotiations on the proposed UNCCIT have seen a long-standing deadlock.

Why Alliances?

The voting patterns in the GA between and among the United States, the WEOG, and the OIC over the past twenty years suggest that state networks - particularly geopolitical alliances - have significant influence on state behavior within the UN. In particular, by commanding adherence to regional or collective policies, as well as ideological and political interests, these alliances are able to dictate how individual states choose to vote categorically or in consensus, and more significantly, what they advocate for (or against) in inter-state discussions on policies and actions.

That said, achieving similar voting behavior in relation to specific policies on the UN agenda is not simply the reason why states join and adhere to certain alliances. Kenneth Waltz (1979: 125) provides a possible explanation, positing that states join alliances to form “balances of power” in a system that lacks structural stability. In order to achieve that stability, states seek allies - and pool their resources, material or otherwise - to counter the threat of other states’ power and hegemony.

Additionally, in a system characterized by informational asymmetry - a condition where one party (in this case, a state) can have more or better information than the other - this art of balancing power through bargaining and decision-making is notably guided by perceptions (Gartzke 2002:1). As such, states have the incentive to manipulate the perceptions of other states by any means; and in the UN, it is done by manipulating things such as voting behavior, and ultimately, the international discourse - for as Foucault (1988) posits, discourses are expressions of power and a process that can be mobilized to shape and define social realities. Thus, while resolutions, declarations, and consensus actions at the General Assembly are legally and operationally non-binding, I argue that the *process*

of voting on these agenda items together with allies is crucial not only because such shapes global policy and international discourse on various issues, but more importantly because the entire exercise signals which state (or states) possess more power over another in a highly unstable system of competing interests. The perception of power acquired by and through alliances in this process can ultimately influence binding decisions at the Security Council, or otherwise impact international convention negotiations.

Such has been clear in efforts to define terrorism within the proposed UNCCIT. Defining terrorism has been used as means by which to assert state power; and in this particular case, it is asserted through and on behalf of allied interests. Linking it to the findings of this study on what state projects matter in the definitional debate, I posit that the deadlock is a function of the inflexibility of both the OIC and the US/West. When recalling the ways in which both state blocs adhere to their state projects - particularly on their policies regarding the Israeli-Palestinian conflict -it is clear that the problem transcends merely defining terrorism per se; the dilemma is couched on protecting allied interests, the adherence to which ultimately redounds to the sovereign benefit of each state involved.

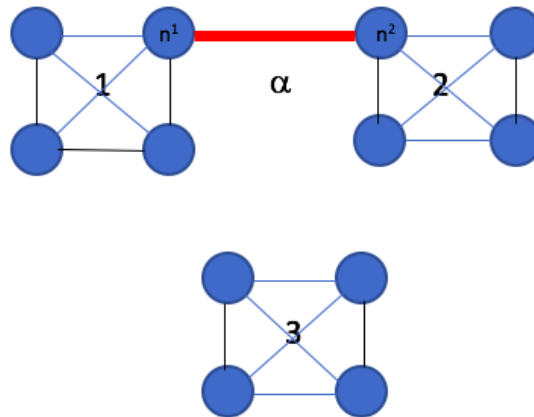
Bridging Networks: How Can the Deadlock End?

Up to this point, our findings have suggested that the strict adherence of the OIC and the US/Western block to their state projects manifested through collective action through their networks, are significantly linked to the inability to come to a consensus on the meaning of terrorism and a comprehensive convention on the phenomenon.

Understanding the reasons for this deadlock necessarily leads us to ask: is it possible for the deadlock to end in the foreseeable future? The answer lies in whether there is a viable path connecting these two otherwise separate networks; a path that can ideally allow information, ideas, and beliefs to pass - and penetrate - such networks to build more viable ties. Ultimately, the two networks need a bridge that can trigger a possible path to compromise.

In network theory, a bridge is a direct tie between nodes that would otherwise be in disconnected components of a graph. Graph 2 illustrates how bridges work. For instance, if networks 1, 2, 3 make up a social networking graph, with n^1 as a node in network 1 and n^2 as a node in network 2, there is a social tie α between n^1 and n^2 . If α were to be removed, 1 and 2 would become disconnected components of the graph. This means that α is a bridge. Without α the networks 1 and 2 would have no path or connection between them. In the same graph, we see that network 3 does not have any bridges to networks 1 and 2, consequently providing no ties, or any means to connect to the other two networks.

Graph 2. Example of a Bridge in a Social Networking Graph



Bridges are important for networks when it is necessary to transmit information from one sub-group to another within a larger network (Ahn 2008). This is significant because social actors, whether individuals, organizations, or nations, shape their everyday lives through consultation, suggestion, support, nagging, and information and resource sharing from/with others (White et al. 1976). These information and discursive network interactions directly or indirectly influence beliefs and attitudes, as well as behavior, action, and outcomes (Pescosolido 2006: 209).

In examining the OIC and network and the WEOG/US network of states, it becomes clear that while there is generally coincidence of votes among these states, these votes do not operationally tie them together as an alliance; rather the voting coincidence ties shown in Graph 1 are better understood as manifestations of loyalty to or membership in their particular political bloc. What is vital to look at then, is whether there are ties between these two networks in terms of membership; that is, whether there are states who can be ideological or political bridges that might provide an opening or path to compromise. Such is crucial because social structure - in this case the social ties within the network structure

through which members become aware of what the others are doing - have effects on collective behavior and action (Macy 1991: 734, citing Granovetter). According to Macy, an analysis of the structure of networks might suggest “that collective action may depend not only on the strength of collective interests but also the network of social ties that channel the necessary chain reactions” in behavior (Ibid: 735). Consequently, the higher the network density, i.e., the more connections nodes have within a network, the fewer mediations are required for information to pass between any randomly selected nodes:

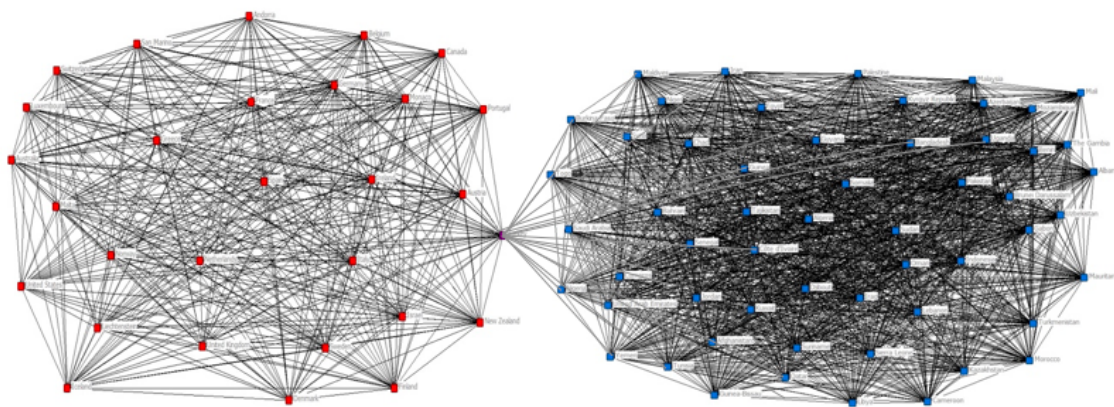
“At maximum density, every node is tied to all others, permitting cues to travel from any point to any other point without mediation. This condition enables each actor to choose based on knowledge of what everyone else is doing. At the other extreme, all ties are disconnected and the network disappears” (Ibid: 735).

Given these principles, I argue that the possibility of achieving a compromise that can break the definitional deadlock in the UNCCIT negotiations highly depends on the number of state connections between the OIC and the WEOG/US blocs. It is not only important that voting behavior coincides when issues need to be decided on. Rather, and more significantly, it is crucial that there are operational relationships between these alliances that act as bridges between them, which would in turn allow information or beliefs to pass through the international state network more easily. Granovetter’s (1973) argument on the “strength of weak ties” becomes relevant here. In his theory, Granovetter acknowledges that individuals (or social actors) have both strong and weak ties because of the variation in our interpersonal relationships between different groups of people. To put it simply, strong ties are the people we know well and often interact with; weak ties are more tenuous in that relationships with them are not as intimate. However, these weak ties are crucial, following Granovetter’s theory, because they bind groups of strong ties together and

bridge otherwise isolated networks into contact with each other. As Granovetter posits, “the degree of overlap of two individuals’ friendship networks varies directly with the strength of their tie to one another.” In essence, when it comes to sharing information, the “weak” ties that overlap can build new ties and might encourage more interaction between existing networks.

The next important question then is this: Is there a bridge between the OIC network and the WEOG/US network can connect the two and allow for compromise? Are there member-states that overlap in terms of operational membership that may possibly serve as that crucial weak tie? The network graph (Graph 3 below) provides a possible answer.

Graph 3. OIC and WEOG Networks with One Path Between Two Networks



Generated using Netdraw from UCINET.

Between the two geopolitical blocs, there is only one country that officially belongs to both, and consequently serves as a bridge between the two networks: Turkey. As a country that geographically straddles the European continent (where Istanbul is located) and Asia, Turkey has long been perceived as a country that has is culturally and socially

steeped in “Eastern” and “Western” traditions. As a result, it finds itself straddling these political lines as well, being a member of geopolitical blocs that cross ideological lines - from the Organization of Islamic Cooperation and the Organization for Economic Cooperation and Development, to the Council of Europe, and the Western Europe and Others Group in the UN. It is also the only Muslim-majority country within the North Atlantic Treaty Organization (NATO).

Voting coincidence numbers from 1996-2006 show that Turkey has voted the same way as the United States about half the time (49%), generally coinciding with the OIC voting pattern but still scoring significantly higher than the OIC voting coincidence average with the US of 28%. This might suggest that Turkey politically behaves in a way that might avoid the ire of the opposing political alliances to which it belongs.

In relation to terrorism, particularly counterterrorism policy, Turkey recently enacted counterterrorism legislation in 2014 that more closely conformed with the European Union’s freedom of expression standards with a “narrower definition of terrorist propaganda” that “criminalizes propagation of the declarations of an illegal organization only if the content legitimizes or encourages acts of violence, threats or force.”⁹⁹ Yet, such legislation arguably provided loopholes that enabled Turkish authorities to “use it to detain and prosecute thousands of politicians, reporters, and activists”¹⁰⁰ that appear to run

⁹⁹ From the section on Turkey, in *Country Reports on Terrorism 2014*, Bureau of Counterterrorism 149–50 (US Department of State June 2015), Available from <http://www.state.gov/documents/organization/239631.pdf>. Accessed 2 March 2018.

¹⁰⁰ Ibid, 150.

counter to human rights standards in countering terrorism pursuant to the UN Global Counter-Terrorism Strategy.

The ability of Turkey to serve as that effective bridge between the OIC and WEOG bloc in the UNCCIT negotiations is also not convincing when we look at how it directly addresses the terrorist threat within its borders. Recently, foreign fighters and Islamist extremists - including ISIS/ISIL - have crossed through Turkey and have even consolidated on Turkey's borders with Syria and Iraq. The country has also dealt with decades of attempted Kurdish secession led by the Kurdistan Workers' Party (Partiya Karekeren Kurdistan, or PKK), which has fought to establish a separate Kurdish state since 1984.¹⁰¹ As such, the Turkish government officially views the separatist group as the most dangerous "terror group" inside Turkey.¹⁰² In 2005, when the ruling Justice and Development Party lost many seats to the Kurdish HDP (People's Democratic Party), the government "declared the PKK fundamentally hostile to the nation's security, threatened to end the immunity of HDP members of parliament, and lambasted the Kurds in general" (Pierini 2015). Such a move resulted in its Western allies urging Turkey to reconsider its policy towards the Kurds and preserve the peace process with regard to the secessionist issue.¹⁰³

With the "terrorist" threat from the Kurds, alongside the threat from ISIS/ISIL Turkey stepped up border security in 2005, and finally allowed NATO aircraft to use its Incirlik

¹⁰¹ From "Turkey: Extremism & Counter-Extremism," Report of the Counter Extremism Project. Available from <https://www.counterextremism.com/countries/turkey>. Accessed 26 March 2018.

¹⁰² Ibid.

¹⁰³ Available at <http://carnegieeurope.eu/strategiceurope/?fa=60926>. Accessed 26 March 2018.

base in the south - something that Turkey has long resisted - in its fight against these groups. Shortly after, the US State department reported¹⁰⁴ that Turkey now served as a “critical geographic choke point in the flow of foreign terrorist fighters” to Syria because of its tighter border security and revised counter-terrorism policy.

While the Graph 3 clearly provides a bridge between the two political networks under study, the preceding examination of Turkey’s national political context and security interests in light of the Kurdish insurgency and the ISIS/ISIL threat lead to the conclusion that this particular overlap in the network does not create an ideal or effective path for information flow, cooperation, or compromise, at least not in the near future. It is clear that the country is a relatively weak tie among particular alliances (i.e., among OIC members on the one hand, and among WEOG members on the other); and following the structural model, as well as the principles of Granovetter’s theory, Turkey’s dual position within each of these alliances can arguably be the political bridge that can open up a path to compromise on the definition of terrorism under the proposed UNCCIT. However, a case can be made that given the current political and security milieu within which it finds itself - i.e., having to address political violence in the context of a movement for self-determination, while simultaneously having to apply force to thwart transnational, no-state extremism - Turkey is not in a position to proactively exploit its place as a (weak) tie between the two networks that can potentially break the deadlock in UNCCIT negotiations.

¹⁰⁴ The US reported this in its 2015 Country Reports on Terrorism.

The findings in this chapter point to the importance of alliances in shaping inter-state behavior - and ultimately discourses - within the UN, as they become conduits through which information, stances, and beliefs, may potentially be shared. As noted earlier in this chapter, two of the main principles of network analysis are that ties between nodes can be channels for transmission of both material (e.g. weapons, money, disease) or non-material products (e.g. information, beliefs, norms), and that persistent patterns of association among nodes create structures that can define, enable or restrict the behavior of nodes. Applying those principles to the networks between and among state blocks, I argue that examining such alliances of states is crucial in predicting not only how states votes on global issues, but also in trying to understand why disagreements and stalemates occur in UN negotiations.

In relation to the terrorism definitional debate, findings here suggest that the deadlock in UNCCIT negotiations exists because there is a constant ideological push-and-pull based on the two blocs' state projects that are reified through their alliances. This dynamic is that which fundamentally determines the stances of states in the negotiations. Absent any overlapping node or viable bridge between the two alliances - in practical terms, without any member-state willing to take on the role of mediator - then there exists no path to compromise at this point in time. The result: Terrorism will continue to be undefined within its own discourse.

CHAPTER 7. Discourse and Dominance: The Power of Shaping a Definition

Discourse as Power

The respect for the sovereignty¹⁰⁵ of states has been the canon on which international relations operates. As a result, the affairs between states, as illustrated by dealings at the United Nations, have been characterized by a constant power struggle driven by national interests (Morgenthau 1978: 27, 5). As Foucault posits, the art of government is therefore about maximizing the power of the state (Foucault 1994).

As noted earlier in this study, power involves an element of domination, coercion, oppression, or preemption – with the latter conducted by politically socializing people into blindly accepting assumptions, frames and viewpoints – (Airaksinen 1992; Young 1992; Lukes 1974). It has also been defined as a position and a relationship situated in a social setting that may have effects on social interactions (Lukes 1974; Wartenberg 1992). Applying this understanding of power to the present examination of the definitional debate in the terrorism discourse, the possible explanation for the deadlock appears to be straightforward: Control over a particular discourse in international affairs – that is, the ability to influence thought and practice on a specific global issue – could very well be a means for a state to obtain power in the form of political status and authority. Controlling a discourse such as that on terrorism, which directly involves issues of security and

¹⁰⁵ Sovereignty refers to the power and ability of a state to govern its own territory and people to the exclusion of other states or external institutions. The concept involves internal autonomy (a set of norms that address the final authority of a state within its borders), an external autonomy (a set of norms on non-intervention of other states) and an intersubjective dimension (recognition from other states of that autonomy and authority (Hagel 2011)).

sovereignty, thus becomes crucial ammunition in the fight to secure a stable and influential position in a system that is perennially in conflict.

Honing in on the terrorism discourse, I thus argue that the inability of UN member-states to agree on what terrorism means for the purpose of having an international convention is both a manifestation of and a weapon of states in the struggle for state power. The data at hand suggest that the challenge of achieving a universal, comprehensive, and legally binding definition of terrorism is shaped not only by the unique set of security and foreign policy interests of states (i.e. their state projects) on the one hand, and the influence of their allies on the other, but additionally by each state's efforts to achieve dominance through discursive manipulation. Through voting behavior, official policy statements and collective declarations with allies, states employ frames that steer views on what terrorism means toward their own interests and ultimately use discourse as power.

The voting behavior at the GA - as we examined in Chapter 6 - can be viewed as a conspicuous marker for a state's overall political clout in international affairs. It is the most obvious way to measure how much power a state has given a particular issue, relative to other states. As we have seen in the previous chapter, the patterns surrounding the coincidence of votes between the OIC and United States/West illustrate the continual tug for power within the UN; but the more remarkable finding to be extrapolated from these patterns is that states which have not been historical superpowers¹⁰⁶ in the system are

¹⁰⁶ Historically, these superpowers were the British Empire, the Soviet Union, and the United States. Superpowers are defined as states that possess great military and economic power "plus great mobility of power" (Fox 1944). With the decolonization of the British Empire following

increasingly challenging the status and influence of such superpower states, at least within a forum where there is theoretical political parity. This is not to say that efforts to manipulate discourse as power necessarily translate to operational, military, or economic power for other states; arguably, the United States' status as a superpower in that regard remains - and an examination of that debate is indeed merited in a different study. However, given that power in the international state system comes in many forms, the most relevant of which (for our present purposes) being the ability to influence the direction of policy or international law that can have real effects on state interests, then using discourse to gain political clout in the international state system (absent any military or economic might of a state) is a very important and strategic tool.

I now turn to an analysis of the relationship of discourse and power as it plays out in the definitional debate on terrorism, in the context of a proposed international convention. The section that follows unpacks the various means by which the OIC states and the US/WEOG states shape and use the terrorism discourse to further their security state projects - particularly in relation to the Israeli-Palestinian conflict - to the detriment of UNCCIT negotiations.

The Word as Weapon: How States Use Discourse as Power

Terrorism is a staple of the international security agenda at the United Nations. If a state seeks international power and influence, controlling the discourse on the topic thus becomes imperative.

World War II, and then the dissolution of the Soviet Union in 1991, the United States is currently the only country considered to be a superpower in such a sense (Nossal 1999).

Foucault (1980;1972) theorizes that discourses are expressions of power as a social relation and a process that can be mobilized to shape and define social realities. As such, discourses are abstract constructs that can assign and communicate specific, repeatable relations to, between, and among objects, subjects, and statements; they are also knowledge systems that define norms of behavior and thought, as well as the meanings that are attached to people and institutions that adopt (or do not adopt) these norms (Foucault 1969). Discourses are shaped by individuals or groups that possess a certain social status; thus, power necessarily operates through discourses. Consequently, the discourses that are created and manipulated by those who have the capacity to do so consequently produce and reify power. Such is the case when states use discourse as power.

Since discourse is important in the production and reification of (state) power, it is vital to understand how discourse itself is produced. Hall (1997, 1992: 201-2) posits that these systems of meaning result from “discursive practice,” where practice involves “the construction and reflection of social realities through actions that invoke identity, ideology, belief, and power.” It is not enough, however, that a particular discursive practice or act is repeated over time (Young and Ortega 2009:1). Discursive practice necessarily involves recurring face-to-face interactions within a particular context in order for meaning to be successfully constructed. This is because discourse creation always takes place within a network of physical, spatial, temporal, social, interactional, institutional, political, and historical circumstances where participants “do” or perform a practice (Young and Ortega 2009:2). Moreover, meaning is constantly negotiated in interaction rather than being

present “once-and for-all” in whatever we say (Young and Ortega 2009: 2). The process does not occur simply in a vacuum.

Given these parameters, I now turn to identifying and understanding the discursive practices engaged in by states, focusing on the members of the OIC and US/WEOG blocs, by analyzing the tools of negotiation they employed as reflected in published UN reports or records of UNCCIT negotiations, as well as in relevant national policy statements on the proposed convention provisions made at the GA. Upon careful examination, these documents point to two major discursive practices used by states to create and/or shape meaning: first, holding informal consultations and bilateral meetings to discuss proposed provisions (as opposed to high-level summits); and second, employing and championing certain rhetorical frames - the ‘human rights frame’ and the ‘legalist frame’ - in building and pushing for their positions. Through these means, the OIC and US/WEOG blocs sought to express their interests and power as player in the state system, and ultimately gain significant influence on the larger global security agenda.

Behind Closed Doors: The Discursive Practice of Informal Consultations

Negotiations on the proposed UN Comprehensive Convention on International Terrorism are facilitated by the Sixth Committee of the General Assembly (the Legal Committee). After the Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism to supplement related existing international instruments was established in 1996 - and after years of deliberating on the scope of the

convention - the Sixth Committee working group began coordinating efforts to take up a draft for deliberation on September 25, 2000.¹⁰⁷

Since negotiations on convention provisions necessarily involved highly charged political issues - not to mention detailed and potentially unwieldy deliberations on literally single words and phrases of the proposed text, most of the deliberative work on the draft convention was done through a series of informal consultations and bilateral meetings, rather than formal or high-level summits involving all member-states. In 1999, Egypt proposed a high-level conference¹⁰⁸ to discuss the proposed convention. Since then, Egypt has repeatedly reiterated this call at GA sessions without any success. Resistance to holding such a conference stems from the belief of some states that a high-level conference is impractical given the low probability of immediate consensus on defining terrorism, more so a consensus on a convention about criminalizing that which cannot be defined. The informal consultations then - the regular face-to-face interactions that we learned are vital for the efficacy of discursive practices as creators of meaning and systems of knowledge - were the necessary, and only, means by which state identity, ideology, belief, and power could be invoked repeatedly. In effect, the terrorism discourse was transformed at this point in time into one that no longer dealt with strategic or operational issues; that is, the focus of international discussions had shifted from a

¹⁰⁷ U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Report, paras 1,10, U.N. Doc. A/C.6/55/L.2 (Oct. 19, 2000). For a complete history and chronology of events pursuant to the establishment of the Ad Hoc Committee in 1996, see the website of the Sixth Committee of the United Nations on Ad Hoc and Special Committees. Available at <http://legal.un.org/committees/terrorism/>.

¹⁰⁸ A high-level conference means that the top officials and decision makers of states, i.e. high-level government officials, ministers, senior leaders of international organizations, and - depending on the issue - heads of government/state - attend and discuss the issue(s) at hand.

discourse that generally condemned terrorism in all its forms, and created norms to prosecute specific *acts* of terror, to one that was obsessed with - and consequently stymied by - defining what it is.

The specific and nuanced ways by which this transformation took place are unfortunately hidden from plain view. Given the nature of these consultations and meetings, there was no media coverage of the deliberations or outstanding issues, nor any detailed transcripts of such discussions. The UN reports submitted by the Chair and/or the Coordinator of the Ad Hoc Committee or Working Group are framed as “not official” and readers are reminded of their use as merely “reference” material rather than official record. Thus, the unofficial summaries within these published reports do not provide detailed information on who said what in those consultations, nor do they name specific member-state delegations in relation to the general points of view outlined in the reports. Generally, the Chair/Coordinator merely identifies the major points of contention and couches the general views on them as given by “some delegations.” The only state or group that is often named in these reports of the Chair or the Coordinator is the OIC, given that the said political alliance is responsible for proposing the major alternative provisions as part of its opposition to the original proposed definition of terrorism in the preamble and Article 2, as well as the exclusionary provisions on state armed forces in Article 18 (A/57/37, para. 9-11).

The singling out of the OIC in these reports came to the attention of one of the group’s members. Sudan: reiterates a commitment to work together towards the conclusion of the draft convention. However, in the oral report, while there had been several references to delegations, only the Organization of Islamic Cooperation had been

explicitly named. As many delegations agreed with the OIC proposal, it was unfair to single out that Organization and to suggest that its proposal ran counter to the Bureau's proposal. Furthermore, no package existed as proposals were still being considered and no single one had yet been

The Coordinator repeatedly reports in these summaries that member-state delegations have varied in support for both proposals "but there was no consensus on what the texts should be" (A/57/37, Annex VI, para. 3). The OIC counter-proposals thus formed - and continue to form - the crux of the debate and the consequent impasse, so much so that all informal consultations and bilateral meetings negotiating the convention have centered on finding a compromise between the originally proposed text and the OIC version.

At this juncture, I argue that despite the lack of explicit attribution of roles to states in the negotiations, these summaries and records do suggest one thing: The mere fact that the OIC counter-proposal displayed prominence in all these consultations speaks to the effectiveness of the group's strategy in shaping the status of the terrorism discourse according to their interests. At the very least, the strategy is effective in that the OIC states are overtly and persistently challenging the power of the West, by challenging an imposed definition of terrorism arguably founded on Western terms. It is important to note that while the original proposed text in 1996, as well as the revised text for negotiation in 2000, was

prepared by India, such draft was formulated in consultation with several delegations, the most notable of which was the United States (Diaz-Paniagua 2008: 524).¹⁰⁹

The twenty-year political impasse surrounding the UNCCIT despite the discursive practice of informal consultations and bilateral meetings that in theory, would have made negotiations more pointed and manageable, clearly demonstrates that the problem transcends semantics; rather, the situation illustrates how the terrorism discourse has become a proxy for the continual power struggle between and among states in the context of global security issues.

While we are unable to closely examine how states interact in their informal consultations from the reports of the Chair or the Coordinator due to the exclusion of detailed transcripts of the meetings, a number of relevant UN General Assembly Official Records (GAOR), might still be helpful for our purposes. Some of these GAOR reflect particular statements or stances made by states relevant to the present analysis during plenary discussions on the proposed convention (and definition). These GAOR provide insight into which states had a significant hand at molding the discourse, and exactly how they did so. What these documents tell us is that another discursive practice was significantly employed by states to control behavior and perceptions: the use and championing of frames to shape meaning and manipulate the terrorism discourse.

¹⁰⁹ U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Chairman, —Informal summary of the general discussion in the Working Group, ¶ 9, in: 2000 Working Group Report, *supra* note 38, Annex IV [hereinafter 2000 Chairman's Informal Summary].

Employing Rhetorical Frames as a Discursive Practice

The concept of framing has been used in various fields in the social sciences to explain how people in a particular context perceive and understand situations and behavior. The concept is largely attributed to the work of Erving Goffman (1974) in relation to the use of frame analysis as a research method. In the study of social movements, Snow and Benford (1998) used framing to posit that social movements are not only transmitters of mobilizing ideas and beliefs, but also active agents in the production of meaning for participants, antagonists and observers. As such, groups that employ frames are “signifying agents deeply embroiled...in the politics of signification” (198).

The concept can similarly be applied to analyze the relationships between states in the international system as they engage in meaning-making to shape political discourse. Fundamentally, frames can be viewed in political life as structures of belief, perception, and appreciation which underlie policy positions (Schön and Martin Rein 1994: 23). When used to communicate information, frames are powerful rhetorical entities in that they make some views more salient than others and “induce us to filter our perceptions of the world in particular ways” highlighting some features of reality while omitting others (Kuypers 2009: 181).

With this in mind, the use of rhetorical frames as a discursive practice by states becomes a necessary tool for agenda-setting at the UN. Indeed, determining what is discussed and, more importantly, shaping how it is discussed in the UN is key to establishing a state’s status and power in the larger global arena. If a state invokes a

particular frame repeatedly and does so in every social interaction between or among other member-states (as how discursive practices should be carried out), then that state might be able to control perceptions of the issue, direct discussions in line with their state projects, and ultimately achieve their policy goals.

The Human Rights Frame

The first frame that has been prominently invoked by both sides is what I view as the *Human Rights* frame. The link between human rights and (counter)terrorism is a relatively recent conversation within the discourse. In the 1970s to 1980s, we know that discussions on terrorism focused on criminalizing acts of terror and were framed within the context of international criminal law. When counter-terrorism became a top priority after 9/11 however, the consideration of human rights became one of the pillars of the UN Global Counter Terrorism Strategy, and changed the way in which states viewed the means by which terrorists (and terrorism) should be dealt with. Today, the discourse has extended to looking at human rights from the point of view of victims of terrorism, and not just the accused (Del Villar and Glasberg 2015). As stated by a senior human rights officer I interviewed who worked at the Counter Terrorism Executive Directorate at the UN, member-states have recognized the import of human rights in the fight against terror with the concept becoming a staple in the discourse:

UN Official: “If you see the minutes of the Security Council back in the early 2000s, when they debated the establishment of the Counter-terrorism Committee (CTC)...you’ll see some states saying, ‘You know it’s essential that the CTC take account of human rights.’ There were several states, and the High Commissioner (for Human Rights) herself that specifically

recommended that there be a Human Rights Office in the CTC.... There are two reasons for that: One is dismay of states at the failure by many states to respect human rights in the fight against terror, but also the clear conviction that counter-terrorism that violates human rights is counter-productive. As time has gone on, you see more and more have emphasized human rights. (Resolution) 1373¹¹⁰ doesn't mention human rights and now you've got to a point that counter-terrorism resolutions mention human rights."¹¹¹

In principle, all UN member-states thus agree that acts of terrorism are reprehensible and unjustifiable since these crimes fundamentally violate human rights norms. Invoking the strength of human rights as a political concept - one which has universal appeal and moral ascendancy - is indeed a discursive practice that states continually perform as they engage in the terrorism discourse. The reason being that appealing to human rights as a touchstone for their arguments attaches to it a universal authoritativeness and legitimacy.

However, the similarity between the OIC and US/WEOG application of that frame stops there. The adage, "one's freedom fighter is another man's terrorist" has never been a more apropos to describe the core divergence in employing this particular frame.

Human Rights as invoked by the OIC. On the one end of the spectrum, the OIC believes that the fundamental human right to self-determination takes precedence in cases when victims of foreign invasion resort to violent response against their

¹¹⁰ Security Council Resolution 1373, adopted unanimously on 28 September 2001, is hailed as the "cornerstone of the United Nations' counter-terrorism efforts" (Rosand 2003) passed following the 9/11 terrorist attacks on the United States. The resolution was adopted under Chapter VII of the United Nations Charter, and is therefore binding on all UN member-states. From the website of the UN: "

¹¹¹ Interview with author, April 13, 2015, UN Headquarters, New York.

perceived oppressors. This stance necessitates that political violence committed in the defense of one's land against alien occupants should not be considered as terrorism under the definition of the proposed convention.

Even at the nascent stages of the negotiations, some OIC member-states¹¹² called for the need to define terrorism by distinguishing it from the “legitimate exercise of the right to self-determination,” with some even suggesting that the definition of terrorism include a reference to “State terrorism,” that would effectively criminalize the use of force by states in the occupied Palestinian territory, Kashmir, Kuwait, Libya, and Sudan (Diaz Paniagua 2008: 516, 522 citing multiple UN GAOR).¹¹³ Subsequent instances of negotiation saw various OIC states delivering statements to the GA on behalf of their political bloc, reiterating this need to respect the legitimate exercise of self-defense against foreign occupation.¹¹⁴ One very striking statement was delivered by Iran in 2017, which went a step further than previous declarations by condemning foreign occupation by a state as the “gravest form of terrorism.” Such utterance

¹¹² Bahrain, Iraq, Malaysia, Oman, the United Arab Emirates, and Yemen in U.N. GAOR 54th Sess. Sixth Comm. 31st mtg., paras. 36, 58, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999); U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg., paras. 10, 24, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg., paras 23, 58, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999); Lebanon, Libya, Iraq, Sudan, Syria, United Arab Emirates in U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶ 51, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶¶ 27, 38, 68, 93, , U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996); U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 61, 80, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

¹¹³ Qatar, Lebanon, Syria, Kuwait, Libya, Sudan, and Pakistan recommended the inclusion of ‘State terrorism’ in the definition - U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg., para. 47, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg., paras. 4, 29, 44, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 34th mtg., paras. 7, 16, 28, U.N. Doc. A/C.6/54/SR.34 (Nov. 15, 1999).

¹¹⁴ Multiple statements were given by Malaysia, Saudi Arabia, Egypt, the United Arab Emirates and Iran to reiterate this frame.

arguably made an indirect case for state terrorism to be included in the convention.

Iran asserted:

“[T]errorism should not be equated with the legitimate struggle of peoples under colonial or alien domination and foreign occupation. The brutalisation of peoples remaining under foreign occupation ***should continue to be denounced as the gravest form of terrorism***, and the use of State power for the suppression and violence against peoples struggling against foreign occupation in exercising their inalienable right to self-determination should continue to be condemned. The Movement reaffirms its principled position under international law and in accordance with General Assembly resolution 46/51 of 9 December 1991 as well as other relevant UN resolutions on the legitimacy of the struggles of people under colonial or alien domination and foreign occupation for national liberation and self-determination” (emphasis mine).¹¹⁵

Examining these statements together with national and regional instruments on terrorism shared by OIC states, I find that this rhetorical frame is fundamentally grounded in the definition of terrorism found in the 1998 Arab Convention on the Suppression of terrorism, to wit:

“Article 2a. ***All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination***, in accordance with the principles of international law, shall not be regarded as an offence” (emphasis mine).

It likewise follows the definition of terrorism in the 1999 Convention of the Organization of the Islamic Conference (OIC) on Combating International Terrorism:

Article 2(a). ***Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime*** (emphasis mine).

¹¹⁵ Statement by H.E. Mr. Gholamali Khoshroo, Ambassador and Permanent Representative of the Islamic Republic of Iran to the United Nations on behalf of the Non-Aligned Movement, Sixth Committee, 72nd Session of the GA on “Measures to eliminate international terrorism). 2 October 2017, p.2.

While these definitions seem to be preeminently situated in a human rights frame, we must be reminded that the advocacy for the right of self-determination that permeates these instruments is fundamentally couched on the OIC state project discussed in chapter five; that is, the regional definitions of terrorism in the OIC and the Arab League were done ultimately with their geopolitical security interests in mind. In particular, the definitions theoretically and operationally support the Palestinian cause. The statement of Syria at a GA meeting in 2002 makes this aversion to Israel explicit:

“The *greatest danger we face in our fight against terrorism is the Israeli interpretation of combating terrorism* and of resolutions of international legitimacy, which is based on a pretext of self-defence. *What kind of self-defence is this which permits occupation, settlements, killing and destruction?*”¹¹⁶ (emphasis mine.)

Such a statement, taken together with those scrutinized closely in the analysis of the OIC state project in chapter five, suggests that the human rights frame is an attempt of the OIC to create a universal normative impetus for other states to adopt the group’s proposed definition of terrorism rather than the original (Western-influenced) text. The strategy was effective at different points from 1996 to 2016 in that other non-OIC states such as Cuba, South Africa, and Bangladesh came out to support the OIC-formulated provisions. The belief among these non-traditional allies of the OIC was that self-determination is an inviolable human right, and the alternative text clearly recognized this social reality (Diaz Paniagua

¹¹⁶ Syria Statement at U.N. SCOR 57th year, 4453rd meeting, U.N. Doc. S/PV.4453, 18 January 2002.

2008: 588). Add to this the adamancy of the OIC to bend to any new or consolidated text from Western states, or to even consider a suggested definition from the Secretary-General in 2005,¹¹⁷ then the frame - as exploited by the OIC - gained prominence, if not legitimacy.

Human Rights as invoked by the US/WEOG. Now on the other end of the spectrum, the US/WEOG bloc of states finds itself employing the same general human rights frame in a similar effort to build some legitimacy around its idea of terrorism, as well as their proposed limits to the scope of a comprehensive

¹¹⁷ In 2005, Secretary-General Kofi Annan released a report titled, "In Larger Freedom: towards development, security and human rights for all, U.N. Doc. A/59/2005 (March 21, 2005) wherein he opined:

"[w]e must act to ensure that catastrophic terrorism never becomes a reality. This will require a new global strategy, which begins with Member-state agreeing on a definition of terrorism and including it in a comprehensive convention... (p.84)

[T]he moral authority of the United Nations and its strength in condemning terrorism have been hampered by the inability of Member-state to agree on a comprehensive convention that includes a definition. It is time to set aside debates on so-called —State terrorism. The use of force by States is already thoroughly regulated under international law. And the right to resist occupation must be understood in its true meaning. It cannot include the right to deliberately kill or maim civilians." (pp. 90-1)

These statements did not sit well with some member-states, with the African Group releasing a critique of the comments that sided in principle with the OIC stance:

"Political, philosophical, ideological, racial, ethnic, religious, or other motives cannot be a justifiable defense for a terrorist act. However, there is a difference between terrorism and the legitimate struggle waged by peoples for their liberation or self-determination in accordance with the principles of international law. (...) The legal definition of terrorism should be the subject of a treaty concluded by the General Assembly and it is not a matter to be determined and imposed by the other organs of the UN." (Malawi Statement on behalf of the African Group, at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom', 22 April 2005 (cited in Diaz Paniagua 2008).

convention. However, its human rights frame has been instead constructed around the basic inviolability of the right to human life, on which terrorism unquestionably and violently infringes. Thus, the group of states argues that terrorism, in whatever shape or form, can never be justified on any grounds, irrespective of motivations and objectives (A/62/37, Annex A, section 1). At the very first instance of pre-9/11 negotiations, Finland on behalf of the European Union even explicitly stated that their group would not enter into any discussions that would entertain “exceptions or justifications of acts of terror based on the motives that prompted the recourse to violence”¹¹⁸ (Diaz Paniagua 2008: 521). Echoing this view, the United States, the United Kingdom, and Israel - three states that have consistently voted in the GA with a high level of coincidence as seen in chapter five - supported the initial Indian draft of the convention, stressing that there should be no other exceptions to terrorism other than those already recognized in the previous instrument,” referring to the Bombings Conventions adopted before the UNCCIT negotiations began (Diaz Paniagua 2008: 521-22).

That said, the United States - together with the state of the G-8¹¹⁹ made efforts in 2005 to resolve the impasse pursuant to high-level instructions from their capitals.¹²⁰

¹¹⁸ Finland Statement on behalf of the European Union, U.N. GAOR 54th Session Sixth Committee, 31st mtg. paras. 16 - 18, U.N. Doc. A/C.6/54/SR.31, 12 November 1999).

¹¹⁹ The Group of 8 (currently G7 due to the suspension of Russia) was an inter-governmental political forum from 1997 until 2014, with the participation of the major industrialized countries in the world - the United States, Germany, France, the United Kingdom, Japan, Italy, Canada, and Russia.

¹²⁰ From personal records of the Coordinator, Diaz Paniagua (2008), regarding an Aide Memoire used for foreign policy demarches in July 2005. Diaz Paniagua (2008) notes: “the United States asked foreign ministers to: ‘instruct your delegation in New York to work constructively before and during the consultations in July to find a bridge that will resolve the outstanding impediments to concluding the convention.’ ”

These states acknowledged the importance of the right to self-determination, but without compromising the effectivity of existing norms and international law on the exercise of that right. They suggested new language for the preamble, to wit:

Recalling that all peoples have the right of self-determination; and that the State Parties to the International Covenant on Civil and Political Rights, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations, in keeping with that Covenant.”¹²¹

Nevertheless, while the OIC recognized the effort (Diaz Paniagua 2008: 564), they maintained that it was not enough and rejected the proposal in favor of their version.

That the same appeal to human rights was made by the OIC and the West without achieving any consensus on what the proposed convention should define as terrorism indeed speaks to the malleability of discourse and how this malleability is exploited for political power. Comparing how the OIC and the United States/WEOG countries took advantage of the human rights frame, I argue that the OIC has been able to achieve its goal of not only advocating for the Palestinian cause, but more importantly showing the United States and the West that it is a force to be reckoned with. Further, I posit that the unbending behavior of the OIC, their insistence on their version, and the lack of flexibility (as illustrated by the lack of interest in revising their proposed text) on the basis of their belief that peoples have a right to defend themselves from foreign invaders suggests that the OIC has gained more political clout

¹²¹ Diaz Paniagua (2008: 653-54); From the personal records of the Coordinator, United States - Proposals on additional preambular language, 25 July 2005.

for itself in the larger security discourse. Whether that clout is recognized and respected is the subject of a different analysis altogether.

The Legalist Frame

The subject of 'State terrorism' as a form of terrorism that needed to be included in the UNCCIT has perennially been negated by the United States and its allies. In order to defend its argument that terrorism was inapplicable to states - and consequently, that a state's armed forces cannot be seen as capable committing terrorism under the proposed convention, the United States invoked the power of existing international law. Given that state conduct is already regulated by the rules of international law on the use of force, particularly articles 2.4 and 39 of the United Nations Charter (Diaz 2008: 529) as well as international humanitarian law, the American delegation had argued on multiple occasions that member-states need to respect this social reality instead of trying to exploit the proposed convention for their interests. Some European states¹²² also opined that the convention must only fill in the gaps left by existing international treaties on terrorist acts to the effect that the forms of terrorism not contemplated by those legal instruments would be the only ones prosecuted under the UNCCIT (Diaz-Paguiani 2008: 527).

Subsequently, In the 2011 Coordinator's report on the informal consultations that took place over that particular session, the Coordinator characterized the negotiation as essentially one that harked to respecting extant international law:

¹²² Statement by Switzerland on a Proposed Amendment to art. 2.1, A/C.6/55/WG.1/CRP.31, 4 October 2000.

“[states were] involved in a process that sought to preserve the *acquis* of the existing international legal framework that had been elaborated with the utmost deliberation, while bearing in mind the continuing application of other legal regimes. It was recalled that it had been stressed in the course of the work of the Ad Hoc Committee that the exclusionary elements had been framed as applicable law clauses because the present convention would operate against the background of an already existing legal framework in which a legion of rules already applied and would continue to apply. Indeed, the Geneva Conventions referred to ‘all measures of terrorism’ being ‘prohibited’ long before the United Nations had adopted its first counter-terrorism instrument.”¹²³

In that same paper, the Coordinator stressed that the various exclusions, framed as applicable law clauses (by United States and others who agreed with the position),

“should be understood against the general background of paragraph 1 of draft article 3, which safeguarded the full range of principles and obligations that the Charter of the United Nations contains, including the right of peoples to self-determination, as defined in General Assembly resolution 2625 (XXV) concerning the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations. The significance of draft article 3, lay in the fact that ***it preserved the integrity and operation of such other laws, and did not seek to alter their scope by the elaboration of the draft convention***” (emphasis mine).

Ultimately, the states that subscribe to the legalist framework in opposing the OIC’s efforts to 1) include state terrorism, and 2) exclude political violence pursuant to the right of self-determination, depend on the authority of the notion that the necessity of respecting human rights must be balanced out by the necessity to respect international humanitarian law, particularly in the fight against terrorism (A/57/37). It can

¹²³ A/66/37 Annex II, Section A para. 5.

be argued that these states are protecting the legal regime on terrorism that they had a heavy hand in constructing, in order to preserve their status and power in the international security agenda.

The statements from the OIC on the other hand, suggest that the Islamic countries might be conversely trying to seize the UNCCIT negotiations as an opportunity to construct a comprehensive, universal, and overarching instrument that could legally trump the current global legal system; one that they feel is partial to Western interests and key to maintaining the power of the United States, Israel, and their allies. Once again, it is clear in this circumstance that the choice of states to use frames as a discursive practice has been a weapon in the struggle for power between and among states.

Using discourse as power in the context explored in this chapter has ultimately done one thing: Instead of solidifying terrorism as a security threat that transcends national interests, it has ossified the discourse into a highly charged political one. In particular, it has been transformed into a forum for addressing the Israeli-Palestinian conflict from the backend. This was clear to one representative of a member-state of the WEOG I interviewed:

Q: Why do you think there is no consensus on the definition of terrorism? What is unique about it? How is it different from genocide or other crimes against humanity?

State Representative: That's a really hard question. I would say that terrorism issues are not just legal issues, they are very much political issues as well. And certainly, the discussions around terrorism at the UN have very entrenched positions on terrorism. And I think maybe, one of the biggest roadblocks for us

on these issues is that it very much comes down to the Israeli-Palestinian conflict.

Q: A conflict which is not particularly distinct relative to other international crimes?

SR: Yes.

I: So, if that doesn't get resolved then, there won't be any consensus around terrorism?

SR: Yes.¹²⁴

From the analysis in this chapter, I conclude that the way in which states have used discourse as a means to gain political power - through the discursive practices of informal consultations, and human rights and legalistic framing - has indeed contributed to the definitional debate on terrorism and the current impasse in UNCCIT negotiations. I have established that such discursive practices were clearly carried out with a view to solidifying and reifying the state projects of both the OIC as a collective network on the one hand, and the United States, Israel, and Western allies on the other.

¹²⁴ Interview with author, 30 December 30 2015 via Skype.

CHAPTER 8. CONCLUSION: WHERE DO WE GO FROM HERE?

“Questions are being raised about the problem of the definition of a terrorist. Let us be wise and focused about this. Terrorism is terrorism. It uses violence to kill and damage indiscriminately to make a political or cultural point and to influence legitimate Governments or public opinion unfairly and amorally. There is common ground among all of us on what constitutes terrorism. What looks, smells, and kills like terrorism is terrorism....(We) must focus on what we all agree is terrorism without subjective interpretation, and filter out prejudice and unilateralism.”

- British Ambassador to the United Nations, New York, October 1, 2001

A few weeks after the atrocities of 9/11, the British Ambassador argued against entering into convention deliberations focused on a definition of terrorism, fully believing that one was not needed. The near certainty by which he claimed that everyone is clear on the fact that what “looks, smells, and kills like terrorism is terrorism” speaks to how highly politicized the discourse had become, and - as we have learned in this study - continues to be. At the very core of the stymied global quest to define terrorism is a confluence of three ingredients that when tightly linked produce a political impasse: states, discourse, and power.

Drawing on Bon Jessop’s strategic-relational approach to examining states, I argued that particular states - the member-states of the Organization of Islamic Cooperation, and the United States and members of the Western Europe and Others Group at the UN - have engaged in the negotiations on the proposed convention pursuant to state projects that are founded on their stances relative to the Israeli-Palestinian conflict. The OIC has pledged unwavering support for the Palestinian cause while the United States and Israel have maintained the strongest alliance in the Middle East. Adherence to these state projects have led to proposed definitions of terrorism that boil down to whether Palestinians or Israeli forces can be considered terrorists when engaging in bilateral

attacks. In effect, varying political interests manifested through state projects have contributed to the deadlock.

Pushing for these state projects became more effective through the network provided by alliances. As shown in the application of network theory to understand how the OIC and US/Western blocs work, particularly through voting behavior in the General Assembly as well as analyzing strength of ties and bridges, a stalemate in UNCCIT negotiations exists because there is a constant ideological push-and-pull based on the two blocs' state projects that are reified through their dense alliances. This network dynamic fundamentally determines the stances of states in the negotiations; and absent any overlapping node or viable bridge between the two alliances - that is, without any member-state willing to take on the role of mediator - then I argue that there exists no path to compromise at this point in time.

Engaging in the UNCCIT negotiations is a means to wield power in transnational life. Shaping and manipulating the terrorism discourse provides states the opportunity to construct systems of meaning in relation to the issue, and consequently gain political clout necessary to influence decision making in the larger security discourse. I have shown here that the OIC and the US/Western bloc have each employed the discursive practices of internal consultations and framing (using human rights and legalistic frames) to construct their arguments in line, ultimately, with their state projects.

The confluence of these three factors lead to the important conclusion that the definitional debate on terrorism has been carved out with a chisel soaked in the Israeli-Palestinian issue. As clearly expressed by every single official I interviewed, the resolution to the deadlock depends on a resolution to the conflict. In these terms, it is fair to argue

that a universal definition of terrorism might not appear in the existing legal regime on terrorism in the near future.

Do we really need a definition?

From the beginning of the negotiations on the UN Comprehensive Convention on International Terrorism (UNCCIT), the United States argued that the process was impractical, challenging, and even unnecessary given the 19 legal instruments adopted on terrorist acts (Diaz Paguiani 2008: 522). It even predicted that negotiations would fail given the varying deep-seated political differences that needed to be solved through a different forum.

Absent a universal definition of terrorism, the United Nations has pushed for a pragmatic approach to implementing its Global Counter-Terrorism Strategy (GCTS). The Security Council's Counter-Terrorism Committee has been monitoring state compliance with reporting mandates based on Resolution 1373, where each state must declare the steps it takes nationally to implement the GCTS. Member-states understand that despite stalled talks on the UNCCIT and no consensus on what terrorism is or means, terrorism continues to be a threat and operations against such threat must continue. The 19 treaties on terrorist acts - though forming a "patchwork"¹²⁵ of protocols in relation to terrorism in international law, have also contributed to the legal regime governing global counter-terrorism efforts and have provided enough legal backbone to pursue transnational

¹²⁵ Interview with author, UN Legal Affairs officer, 13 April 2015.

terrorists and hold them accountable. It is then fair to ask: do we even need a universal, legal, and binding definition of terrorism then?

The answer to that question has been mixed. On the one hand, some states have argued that with a strong legal framework from existing treaties, a universal definition is not operationally necessary. Terrorists have been pursued and prosecuted, arguably effectively - by using national criminal laws based on UN treaties and counter-terrorism guidelines for years. Some UN officials whom I interviewed even opined that though a definition of terrorism might contribute to the symbolic legitimacy of the UN's counter-terrorism efforts, such would not have a real or significant impact on how counter-terrorism operations are carried out on the ground.

On the other hand, some member-states and UN legal officers believe that having a universal and legally-binding definition of terrorism within a comprehensive convention could serve as an important “catch all”¹²⁶ instrument to prosecute acts that can be considered terrorism, but which are not covered under existing treaties. Supporting this idea, Carlos Fernando Diaz Paniagua - former Coordinator for the Ad Hoc Committee established by GA Resolution 51/210 that is in charge of UNCCIT negotiations - wrote that not having a definition of terrorism could potentially cause major legal and political problems (2008: 541-542). State obligations pursuant to treaties and Security Council resolutions (particularly the post-9/11 Resolution 1373) are “hinged precisely on the concept of terrorism;” and absent a common understanding of what terrorism is, it may be difficult to criminalize terrorist acts, deny refugee status to terrorists, and prevent

¹²⁶ Ibid.

activities of terrorist movements in a homogeneous manner. (Ibid: 542). The OIC, through Qatar once stated that having a comprehensive convention is not merely emblematic; it has practical usefulness as well:

“The definition of terrorism and the drafting of an international convention to combat it are not academic or theoretical issues; they are factual, practical issues. A strict, comprehensive definition of terrorism could help us in waging the war against it. Proceeding from such a convention, we could set out clearly those States and groups against whom the war is targeted, those who are qualified to lead the struggle against terrorism and terrorists, and the ways and means to be used in such a war.”¹²⁷

This dissertation shows, however, that both the symbolic and operational need for a universal definition of terrorism to strengthen the theoretical and legal regime on the said security issue only comes second to the political interests of states. Securing a position of power and political strength in the international state system is instead what is most essential for these entities that belong to it.

At this point in history, unless a member-state that is politically situated within the OIC and the US/WEOG alliances - such as Turkey - is willing to serve as the bridge or mediator between those opposing alliances, then a possible path for these states to speak the same language and come to a compromise remains blocked.

¹²⁷ Statement of Qatar on behalf of the Organization of the Islamic Conference. U.N. SCOR 57th year, 4453rd meeting, resumption 1, at 18 - 19, U.N. Doc. S/PV.4453. Jan. 18, 2002; also cited in Diaz Paniagua (2008: 452).

A View to the Future: A New Mandate for Scholars and Policy-makers

The definitions of terrorism that have been proposed within the global discourse throughout recent history have focused on physically violent nature of terrorist acts - from bombings and shootings, to beheadings and chemical attacks. Such stereotypes about what terrorism “looks like” however, clearly predate the forms into which terrorism has evolved in recent times, and consequently leave out the consideration of acts that do not fall within the traditional ambit of current international law. One of those new forms is cyberterrorism.

As UN member-states are stuck in a political quagmire seeking to define terrorism as the enemy and are unable to pull themselves out of it, that enemy is getting smarter and stronger. Individual transnational terrorists, cadres of individuals, or states themselves - as we have seen with attempts by Russia to influence the 2018 US elections¹²⁸ - are exploiting the unfettered nature of cyberspace, making cyberattacks increasingly common as a means of spreading fear for a political cause.

Cyberterrorism and its implications to the terrorism discourse - while worthy of more scholarly consideration - have not been discussed in this project as the topic is beyond the study’s intended scope. It is an area of research however that I believe needs to be properly and extensively explored not only by security analysts and political scientists, but more importantly sociologists. By providing a sociological lens to examining terrorism as a social fact, and a staple of transnational political life,

¹²⁸ United States Office of the Director of National Intelligence Statement on Declassified Intelligence Community Assessment of Russian Activities and Intentions in Recent U.S. Elections

practitioners and policymakers might be able to benefit from an analytical view that attends to the nuances of the terrorist threat and social milieu within which terrorists operate.

As stated at the beginning of this dissertation, the objective of this study was to provide an analysis that would unpack the sociological significance of not having a global consensus on the definition terrorism. I have attempted to probe into why and how such a discursive challenge exists in the first place, with the hope of finding spaces for compromise in the policy arena.

While the newfound knowledge gained here on how the link between states, networks, and power has shaped the definitional debate on terrorism and the larger global terrorism discourse may not have provided a categorical solution to the discursive crisis, I maintain hope that it has at least contributed to the sociological and political conversation on terrorism, as well as to the important process of understanding - and hurdling - the global challenges to quelling the terrorist threat.

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APPENDIX

Current Draft of the proposed UN Comprehensive Convention on International Terrorism (Appendix II of GA Resolution A/59/894, presented for negotiation on 12 August 2005)

A/59/894

Appendix II

Draft comprehensive convention against international terrorism

Consolidated text prepared by the coordinator for discussion*

The States Parties to the present Convention,

Recalling the existing international treaties relating to various aspects of the problem of international terrorism, in particular the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14 December 1973, the International Convention against the Taking of Hostages, adopted in New York on 17 December 1979, the Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 26 October 1979, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, the International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997, the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999 and the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005,

Recalling also the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994,

* This consolidated text, except for paragraph 10 of the preamble and article 20, is taken from document A/57/37, annexes I, II and III, with minor editorial changes. Paragraph 10 of the preamble was circulated by the present coordinator on 29 July 2005. Article 20 reproduces the text proposed by the former coordinator for article 18, contained in document A/57/37, annex IV. It is understood that all other amendments and proposals remain on the table.

Recalling further the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 51/210 of 17 December 1996,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations, which endanger or take innocent lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

Reaffirming their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize friendly relations among States and peoples and threaten the territorial integrity and security of States,

Recognizing that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the undermining of human rights, fundamental freedoms and the democratic bases of society,

Recognizing also that the financing, planning and inciting of terrorist acts are also contrary to the purposes and principles of the United Nations, and that it is the duty of the States Parties to bring to justice those who have participated in such acts,

Convinced that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is an essential element in the maintenance of international peace and security and the sovereignty and territorial integrity of States,

Noting that the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951, and the Protocol relating to the Status of Refugees, done at New York on 31 January 1967, do not provide a basis for the protection of perpetrators of terrorist acts, and stressing the importance of the full compliance by the Parties to those instruments with the obligations embodied therein, including, in particular, the principle of non-refoulement,

Reaffirming that in accordance with the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, all peoples have the right to self-determination, freedom and independence, and that those peoples that have been forcibly deprived of its exercise have the right to struggle to that end, in conformity with the relevant principles of the Charter and of the above-mentioned Declaration,*

Bearing in mind the necessity of respecting human rights and international humanitarian law in the fight against terrorism,

Realizing the need for a comprehensive convention against international terrorism,

Have resolved to take effective measures to prevent acts of terrorism and to ensure that perpetrators of terrorist acts do not escape prosecution and punishment by providing for their extradition or prosecution, and to that end have agreed as follows:

* It is understood that further consideration of this paragraph might be necessary.

Article 1

For the purposes of the present Convention:

1. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

3. “Infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewerage, energy, fuel, banking, communications, telecommunications and information networks.

4. “Place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

5. “Public transportation system” means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or to the environment; or

(c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present article resulting or likely to result in major economic loss;

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:
- (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or
 - (c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of the present article; or
 - (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of the present article.

Article 3

Where the present Convention and a treaty dealing with a specific category of terrorist offence would be applicable in relation to the same act as between States that are parties to both the present Convention and the said treaty, the provisions of the latter shall prevail.

Article 4

The present Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 7, paragraph 1 or 2, of the present Convention to exercise jurisdiction, except that the provisions of articles 9 and 13 to 17 of the present Convention shall, as appropriate, apply in those cases.

Article 5

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2 of the present Convention;
- (b) To make these offences punishable by appropriate penalties which take into account the grave nature of these offences.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the present Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 of the present Convention when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
- (b) The offence is committed wholly or partially outside its territory, if the effects of the conduct or its intended effects constitute or result in, within its territory, the commission of an offence set forth in article 2; or
- (c) The offence is committed against a national of that State; or
- (d) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
- (e) The offence is committed in an attempt to compel that State to do or to abstain from doing any act; or
- (f) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to the present Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, the present Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

States Parties shall take appropriate measures, in conformity with the relevant provisions of national and international law, including international

human rights law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offence set forth in article 2 of the present Convention.

Article 9

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 of the present Convention by taking all practicable measures, including, if necessary and where appropriate, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission, within or outside their territories, of those offences, including:

(a) Measures to prohibit the illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the commission of offences set forth in article 2;

(b) In particular, measures to prohibit the establishment and operation of installations and training camps for the commission of offences set forth in article 2.

2. States Parties shall further cooperate in the prevention of the offences set forth in article 2, in accordance with their domestic law, by exchanging accurate and verified information and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds, property, equipment or other instrumentalities relating to the commission of such offences.

3. States Parties may exchange information through the International Criminal Police Organization (Interpol) or other international and regional organizations.

Article 10

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2 of the present Convention. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 of the present article are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 11

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 of the present Convention may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State;

(c) To be informed of that person's rights under subparagraphs (a) and (b) above.

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of the present article are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1 (c) or 2 (a), of the present Convention to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 12

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 of the present Convention applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 13

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to the present Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law and, in particular, the Standard Minimum Rules for the Treatment of Prisoners.

Article 14

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2 of the present Convention, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 10 of the present Convention.

Article 15

None of the offences set forth in article 2 of the present Convention shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or

for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 16

Nothing in the present Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 of the present Convention or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 17

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under the present Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

2. For the purposes of the present article:

- (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
- (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
- (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for the time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 18

1. The offences set forth in article 2 of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of the present Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may, at its option, consider the present Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2, of the present Convention.
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with the present Convention.

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or its applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

1. Nothing in the present Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by the present Convention.
3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by the present Convention.
4. Nothing in the present article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

Article 21

States Parties shall carry out their obligations under the present Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in the present Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by the law in force in that State Party.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months of the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 of the present article with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. The present Convention shall be open for signature by all States from ... to ... at United Nations Headquarters in New York.

2. The present Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. The present Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. The present Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 26

1. A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which such notification is received by the Secretary-General of the United Nations.

Article 27

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at New York this ... of ... two thousand and five.
